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*Mr. C. H. Hutchinson*  
*Mr. C. H. Hutchinson*

**PRACTICAL ABRIDGMENT**

OF

**ELECTION LAW;**

FROM

*THE ISSUING OF THE WRIT*

TO

*THE RETURN.*

ADAPTED PARTICULARLY TO THE USE OF RETURNING  
OFFICERS, CANDIDATES, AND ELECTORS, IN THE  
RESPECTIVE PROCEEDINGS FOR COUNTIES, CITIES  
BEING COUNTIES, AND BOROUGHS.

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BY JOHN DISNEY, OF THE INNER TEMPLE, ESQ.  
BARRISTER AT LAW.

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## PREFACE.

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**T**HE Editor is more inclined to give an account of the plan upon which this short abridgment is formed, than to enter into unnecessary apology or excuse, for undertaking it: the leading principle upon which he has gone, having been a wish to furnish a useful compendium of election law, as far as it extends, founded upon the authority of reports and treatises of established credit.

The whole work is divided into three principal parts: viz. as the law affects elections for Counties, Cities, &c. being Counties: and

Towns and Boroughs : each of these is subdivided into three chapters; “ Proceedings *previous* to the election :” “ Proceedings *at* the election :” “ Proceedings *after* the election.” In the first three chapters, are comprehended every thing which can take place, from the issuing of a writ for electing a county member, till his return be sent into the Crown Office : In the next three chapters all things which relate to the electing of a member for a city being a county, and which differ from the election of a county member, are laid down in the same routine ; but wherever the proceedings are the *same* as in counties, reference is made to the former chapters. The three last chapters contain all that respects elections for boroughs, specifying what is *peculiar* to them in the same manner as before done in counties and cities ; and where the proceedings are similar, referring back to the chapters preceding.

The distribution of each chapter is now

form ; and the subdivisions correspond exactly with each other. From this statement it will be seen that any point may be found with the greatest readiness ; as, for instance, all questions concerning *freeholds*, will be discussed in elections for a county : so, all questions of *burgage* will be found in the election for a borough ; but, wherever the right of voting for a borough includes a freehold, the necessary qualities of such an estate will be found in the section on Voters for Counties ; and any thing *peculiar* to a freehold vote *in a borough*, is stated in the section appropriated for voters in boroughs. This may serve to shew the general *plan* of the work, which will appear more clearly from the analytical table of contents which is intended to be so constructed as to answer the purpose of an index.

It has been the Editor's object studiously to avoid giving any thing upon his own authority ; and he has chosen rather to take

the words of his author, even though they may, at first, seem unconnected with the prior sentence, than risk a misconception of his own. In some instances however he has been obliged to vary the phrase, in order that it may stand by itself; for it is impossible in every instance to take a sentence out of a paragraph in a regular treatise, and place it by itself as a substantive dictum.

But in all cases the references have been scrupulously preserved that the reader may form his own judgment.

It is difficult in many instances, to find what the grounds were upon which select committees have founded their resolutions, and wherever this has been the case, such resolutions have been omitted; such, for instance, where a petition has been presented against a sitting member as being a placeman, and the committee have resolved generally "that the sitting member is duly elected," the

resolution is not noticed; but when the committee have determined that Mr. A. B. *being, &c.* is not "as such disqualified, but "was duly elected," the resolution is put down *verbatim*, because it affords a general rule for the future.

It has been a principal object to select such resolutions only as give general rules, or such particular cases of voters, or others, as furnish matter from whence a general rule may be drawn: to have adopted every case in the books, where minute differences of circumstances occur, would only have rendered this manual complex and cumbersome.

The design has been to give to the public a concise compilation, not an elaborate treatise; but merely that which would furnish the counsel, agent, or candidate with sufficient information to enable him to do his duty to his client or himself during the hurry and confusion of a poll.

This work, like most others, he fears will, after all, be deficient in many things; but he hopes still enough will be found in it to satisfy the partiality of those who originally suggested the undertaking.

It will be necessary, however, to state further, that wherever a *statute* is quoted, the *substance* and not the *words* are given, there being references added to each statute where the section may be found, in an edition of the Election Acts, published in 1811, by the same editor.

The references to these statutes have been made by inserting the editor's name at length, in order that those who may make use of such reference may find them in a uniform volume, or in their place among the statutes at large.

The editor, aware that books of more research than this can be, are wanted, when the validity of a return is to be tried by a committee of the House of Commons, has

confined himself entirely to proceedings up to the making of the return; and shall feel himself quite satisfied if he has deserved the humble praise of having done what may prove useful to those concerned in this branch of the law.

JOHN DISNEY.

*Lincoln's-Inn-Fields,*

*January, 1812.*





A  
PRACTICAL ABRIDGMENT  
OF  
ELECTION LAW.

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CHAPTER I.

*Proceedings previous to a County Election.*

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Sect. 1.—Issuing of the Writ.

1. **WHEN** the crown has determined to call a parliament, a warrant or bill issues, signed by the king, and addressed to the lord chancellor, or keeper of the great seal, directing him, upon the receipt thereof, “*to cause such and so many writs to be made and sealed under the great seal, as has been used and accustomed.*” Upon this authority the writs are made out and issued. *Simcon*, 142.

2. They are *directed* respectively to the sheriffs of counties; the chancellor of the duchy of *Lancaster*; the bishop of the county palatine of *Durham*, or his temporal chancellor; the chamberlain of the county palatine of *Chester*, his lieutenant or deputy; the lord warden of

the Cinque Ports, or his deputy. *Heyw. Boroughs*, 87.

3. When any new parliament shall at any time hereafter be summoned or called, there shall be forty days between the teste and returns of the writs of summons. 7 & 8 *W. 3. c. 25. s. 1.* *Disney's El. Stat.* 10.

4. But issuing the writ by the chancellor, is only upon the first summons of the parliament; for when the parliament are sitting, so jealous is it of its privileges that it takes the power of issuing the warrant for the writ into its own hands. *Simcon*, 143.

5. During a recess, whether by prorogation or adjournment, the speaker is to issue a warrant to the clerk of the crown, to make a new writ for a new election in the room of any member who may die or become a peer, either during the recess or previous thereto. 24 *Geo. 3. c. 26. s. 2.* *Disney's El. Stat.* 267.

6. In the execution of the king's commands, thus notified to him under the great seal, the sheriff acts but as a *ministerial* officer: he is not to judge of the legality or illegality of the writ; the great seal is a sufficient warrant, and obliges him to the execution of it: "nor is he liable to be questioned for the same, although the writ be not according to law, whereof he is not the judge." *Heyw. Counties*, 4.

*To whom delivered.*

7. The several writs shall be delivered to the *proper officer* to whom the execution thereof doth belong and appertain, and to no other person whatsoever. 7 & 8 W. 3. c. 25. s. 1. *Disney's El. Stat.* 10.

8. Where the writ was *delivered* to the candidate himself, the party delivering it was committed by the house. *Simcon*, 145-6.

9. As the messenger of the great seal is responsible for the *due delivery* of the writ, any one may have the carriage of it to whom he chuses to entrust it. *Simeon*. 145. *Heyw. Boroughs*, 93.

10. But the only restriction laid upon him by the House of Commons, in the choice of a deputy, seems to have been, that he shall not transmit by a candidate. *Heyw. Boroughs*, 93.

11. 11th Feb. 1772, the House of Commons resolved, that V. M. esq. (who had been a candidate at the *last* election, but is not stated to have been one in the journals,) having taken the writ from the messenger, who was sent down to deliver the same to the sheriff, and having delayed the delivery thereof for fifteen days, is thereby guilty of a violation of the law, and a breach of the privilege of this house. *Heyw. Boroughs*, 99, 101.

*To be endorsed.*

12. And every such officer, (i.e. he to whom the execution of the writ doth belong,) upon the receipt of the same writ, shall, upon the back thereof, endorse the day he received the same. 7 & 8 *W. 3. c. 25. s. 1. Disney's El. Stat. 10.*

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Sect. ii.—Notice of Election.

1. ALL notices of the time and place of *any* election for members to serve in parliament, shall be publicly given at the usual place or places, between eight o'clock in the forenoon, and four o'clock in the afternoon, from 25th *October* to 25th *March* inclusive: and between eight o'clock in the forenoon and six o'clock in the afternoon, from 25th *March* to 25th *October*, inclusive. 33 *Geo. 3. c. 64. s. 1. Disney's El. Stat. 166.*

2. If this statute be not observed, the election is void. *Simeon, Adden. xvii.*

3. The sheriff where the election is to be, must hold his county court for the election, *at the most usual place of election* where it has been held for forty years past. And shall *there* hold the election, unless a usual county court be to be held in *six days* after the receipt of the

Writ. 7 & 8 W. 3. c. 25. s. 3. *Disney's El. Stat.* 11. 12.

4. The election was held at *Pembroke*, though *Harfordwest* was the most usual place. Mr. *Owen* being returned, some of the freeholders in the opposite interest petitioned, on the ground that the election had been held at the wrong place, contrary to the statute: but the ordinary sheriff's court having been appointed at *Pembroke*, previous to the receipt of the writ by the sheriff, and the writ having been received more than six days before the day when the court was fixed to be held; it was contended, that in those circumstances the sheriff was bound, by another provision of the same statute, to hold the election at that court; and therefore could not comply with the other requisition of the statute: and the sitting member (Mr. *Owen*) was declared duly elected. *Hayw. Count.* 228, 231.

5. A want of notice cannot be cured by consent of the candidates, to take a poll without. *Simcon*, 153.

6. Though this is said by Mr. *Simcon*, with reference to boroughs, yet the principle may equally apply to counties. *Ed.*

7. But in the county of *Hampshire*, he may adjourn from *Winchester* to *Newport*, in the *Isle of Wight*, at the request of one of the candidates. 7 & 8 W. 3. c. 25. s. 10. *Disney's El. Stat.* 16.

8. And so essential is the place of election

prescribed by the statute, that when any particular circumstance requires a variation, the legislature itself must interpose to authorize it. Therefore during the last war there being prisoners stationed at *Winchester*, who required a guard; and the soldiery being, by other statutes, ordered to be removed during the election, it was enacted that the election should be held at *New Abresford*, and not at *Winchester*. *Simeon*, 148.

9. The sheriff within two days after the receipt of the writ, is to proclaim *at the place* where such election is to be by law held, a special county court for holding the election only, on any day, (except a *Sunday*,) not later from the day of proclamation than the sixteenth, nor sooner than the tenth. 25 *Geo. 3. c. 84. s. 4.* *Disney's El. Stat.* 152.

10. This statute has made the election of knights of the shire no longer to depend upon the time when the next county court would be held in regular course: but requires the sheriff to call a special county court expressly for this purpose only. *Heyw. Counties*, 10.

11. The committee did not consider the omission of any *form* prescribed by a directory act of the 25th of his present majesty, as sufficient to make the election void. 1 *Peckw.* 507.

## Sect. III.—Erecting Booths.

1. If a contest be expected, and there are several candidates, the sheriff may, at the expence of the candidates, erect such number of booths *as the candidates, or any of them, shall, three days at least before the commencement of the poll, desire*, so as they do not exceed the number of rapes, lathes, wapentakes, wards, or hundreds in the county; nor are they to exceed fifteen in number. 18 *Geo. 2. c. 18. s. 7. Disney's El. Stat.* 83.

2. The name of each rape, &c. must be put up on every booth. *Ibid.*

3. The sheriff must make out lists of every town, village, parish, *and* hamlet, being wholly or in part in the rape, hundred, &c. for which the booth is allotted; and must furnish copies of such lists to candidates or agents, at two shillings each. *Ibid.*

4. If none of the candidates require any booths or places for taking the poll to be erected, three days at least before the commencement of the poll, as directed by the 18 *Geo. 2. c. 18*; or if no candidates are declared previous to the election, but a contest comes upon the sheriff by surprize, when the freeholders are met to make their choice, the sheriff is not empowered to erect any booths or polling places at the expence of the candidates: but must take the poll in

some open or public place, and pursue the regulations of the 7th and 8th *Will. 3. c. 15*, exactly as if the 28th *Geo. 2.* had never passed; except that by the ninth section, he must allow a check book for every poll book, as where booths have been regularly erected. *Heyw. Counties*, 169.

5. A candidate at an election for members of parliament is liable to no expence except such as the statute law casts upon him, or he takes upon himself by his express or implied consent. By Lord *Ellenborough*, 1 *Campbell's Rep.* 223.

6. Whether the candidate had taken upon himself the character of candidate, appears to be matter for a jury to determine, as Lord *Ellenborough* left it to them to find as a question of fact, in the above case. 1 *Campbell's Rep.* 225.



## CHAPTER II.

*Proceedings at a County Election.*

## Sect. 1.—Reading the Writ and Statute.

1. **T**HE freeholders being assembled, the sheriff is by 7 *Hen. 4. c. 15.* (*Disney's El. Stat.* 194.) to begin the election by making proclamation, in full county, of the day and place of the meeting of parliament; which is usually done by making proclamation for silence, and then reading the king's writ. *Hcye. Counties*, 232.

2. Immediately after the reading the writ, the bribery act, (2 *Geo. 2. c. 24.*) shall be openly read before the electors there assembled. 2 *Geo. 2. c. 24. s. 9.* *Disney's El. Stat.* 60.

## Sect. ii.—Oaths to Sheriff.

1. THE sheriff must immediately after reading the writ take the following oath; which *any justice or justices of the peace of the said county*, or in his absence *three electors* are required to administer.

“ I, A. B. do solemnly swear, that I have  
 “ not, directly or indirectly, received any  
 “ sum or sums of money, office, place or em-  
 “ ployment, gratuity or reward, or any bond,  
 “ bill or note, or any promise or gratuity  
 “ whatsoever, either by myself or any other  
 “ person to my use, or benefit, or advantage,  
 “ for making any return at the present election  
 “ of members to serve in parliament; and that  
 “ I will return such person or persons as shall  
 “ to the best of *my judgment* appear to me to  
 “ have the majority of *legal votes*.” 2 *Geo. 2.*  
*c. 24. s. 3. Disney’s El. Stat. 57.*

2. In the Middlesex case (2 *Peck. 13.*) it was contended that from the word “judgment” used in this statute, the sheriff is a *judicial* officer; but the better opinion (*Heyw. Counties, 309, 322.*) is that he is only *ministerial*. But he is, at all events, judge of the voter’s credibility. *Ed.*

3. There is an inaccuracy in penning this act (2 *Geo. 2. c. 24.*); for the sheriff, in one part, (*s. 9.*) is required to read the 2 *Geo. 2. c. 24*: and, in another, to take the oath, *immediately after reading the writ*.—Quere, then, which is to be done first? *Heyw. Counties, 233.*

## Sect. iii.—Candidates.

1. IN one or two cases it has become a question—What sort of nomination makes a *person a candidate*? It was said in the case of *Nottingham*, 1802-3, “as to the time when a candidate may be proposed; there are no authorities to say that he may not be proposed at any time before the return is made.” This was not contradicted. 1 *Peckw.* 83.

2. “*Candidate*” is a vague term: no certain idea is fixed, by law, to it. But Mr. L. was certainly a candidate: and this was a bribe to induce Mr. W. to vote for *him*, at least. Surely *asking a vote* for a man is enough to make him a candidate. By Lord *Mansfield*, *Combe v. Pitt*, 4 *Bur.* 1590.

3. The election was held on the 7th *October*, and Mr. *Burke* first named a candidate on the 8th *October*; the committee, on petition, resolved that Mr. *Burke* was eligible. 1 *Doug.* 214 and 258.

4. In an action for the expences of an election, it is a question for the jury, whether the party ever adopted the character of candidate. *Morris v. Bardett*, 1 *Campb. Rep.* 220.

5. Every elector may vote for whom he pleases to be his representative, whether he be a candidate or not. 3 *Luders.* 19, *argu.*

*Qualification.*

6. Candidate for a county must be *scised of or entitled to* an estate freehold or copyhold in land for life or greater estate to his own use, in *England, Wales, or Berwick upon Tweed*, of 600l. a year, above what will satisfy all incumbrances affecting the same. 9 *Ann. c. 5. s. 1. Disney's El. Stat. 29.*

7. The qualification may be in *Ireland*. 41 *Geo. 3. c. 101. s. 23.*

8. The act not to extend to the eldest son or heir apparent to a peer of parliament, or person qualified to be a knight of the shire. 9 *Ann. c. 5. s. 2. Disney's El. Stat. 29.*

9. A mortgage is not a qualification, unless the mortgagee has been in possession seven years before the time of *his election*. *Same stat. s. 4. Disney's El. Stat. 30.*

10. That every person who appears as a candidate, or be proposed to be elected, must (if required at the election, or before the day fixed in the writ of summons, by any other candidate, or any two persons having a right to vote at such election,) take the oath prescribed in the act. 9 *Ann. c. 5. s. 5. Disney's El. Stat. 30.*

11. The sheriff or under-sheriff may administer it, and must certify it into K. B. or Chancery. 9 *Ann. c. 5. s. 7. Disney's El. Stat. 31.*

12. In one case, the House of Commons resolved that the candidate having refused to take the oaths as directed by the statute of *Annæ*, though duly required so to do, and not having, *at any time before the meeting of parliament* taken the said oath, his election is thereby void. *Heyw. Counties*, 368.

13. After the candidate has refused to take the oath, the notoriety of such refusal may probably operate as sufficient notice to the electors of his disqualification; and consequently the votes given for him be thrown away, and the candidate next upon the poll be declared duly elected by the committee. But the sheriff (according to the case just cited) could not without danger to himself, reject the votes of those electors who chuse to poll for him; or refuse to return him, in case he has the majority. *Heyw. Count.* 368.

14. Counsel for petitioners admitted, that no notice was declared to the electors, at the election in question, of Mr. *Hobart's* being disqualified and ineligible; or that these votes for him would thereby become nugatory and be thrown away. *3 Luders*, 461, *argu.*

15. In the *Bristol* case, objection was taken, that the qualification of Mr. *Cruger*, who was elected, was executed during the poll; but the objection was over-ruled, and Mr. *Cruger's* election was confirmed. *Simeon*, 51.

16. The House of Commons has been very

jealous of trusting returning officers with the power of judging of the ability or the disability of candidates. In this respect they have been held to act merely ministerially, in computing the number of votes, and returning the persons, whether disqualified or not, who have had the majority. *Heyw. Counties*, 355.

17. Mr. N. J. delivered in a rent-charge as a qualification; the committee determined he was not qualified, according to the statute 9 *Anne*. But no objection was taken to the *rent-charge* as such; but the qualification was bad; because the person from whom N. J. claimed, had no title to grant it. 1 *Peck*. 94, 99.

### *Personal Disqualifications.*

18. Candidate guilty of treating, cannot *serve in parliament*. 7 *W. 3. c. 4. s. 2. Disney's El. Stat.* 6.

19. Persons holding places created since 1705, commissioners of prize, or sub-commissioners; or controulers of army accounts; or commissioners of transports, or sick and wounded; or army agents; commissioners of wine licences; or governor, or deputy governor of plantations; or commissioner of navy in the out-ports; or any pensioner of the crown, during pleasure, are incapable of being *elected*. 6 *Anne, c. 7. s. 25. Disney's El. Stat.* 25.

20. Pensioners of the crown *for years* are incapable of being *delected or chosen* members. 1 *Geo.* 1. *c.* 56. *s.* 1. *Disney's El. Stat.* 45.

21. Commissioners, farmers of, or persons concerned in farming, managing, or collecting *customs*, are incapable of *sitting, voting, or acting as members.* 12 & 13 *W.* 3. *c.* 10. *s.* 1 & 2. *Disney's El. Stat.* 18.

22. Sir R. A. was collector for life by patent of the great and petty customs in the port of *Yarmouth*, at the time of *delection* : he surrendered on the 7th of *February* : the surrender was enrolled on the 8th, and he took his seat on the 9th ; having first submitted his case to the house, who resolved he should be admitted to take his seat. *Simon.* 43.

23. Nor commissioner of customs, excise, or stamps, or persons concerned in farming or managing any duties or aids :

Nor commissioner of appeals, or controul of the said duties :

Nor commissioner of impress accounts ;

Nor any agent for any regiment ;

Nor any party to any contract, or commission from the Irish treasury ; or any other person, on account of the public service ;

Nor any clerk or deputy of the high treasurer or commissioners of treasury, or of the auditors or tellers of the exchequer, or of commissioners of stamps or appeals :

Nor any person holding any " office or place

“*of profit*” under the lord lieutenant, or lord justices, created since 33 *Geo.* 3. shall be capable of being elected or chosen. 41 *Geo.* 3. c. 52. s. 4. *Disney’s El. Stat.* 178.

Exceptions:—

Commissioners of the treasury and their secretary.

The auditor-general of the exchequer.

Members of any incorporated trading companies, now (1801) existing in *Ireland*, so far as the contract is entered into in their corporate capacity.

The secretary of the treasury.

The secretary of the chancellor of the exchequer. 41 *Geo.* 3. c. 52. s. 4. *Disney’s El. Stat.* 178, 180.

24. Persons concerned in collecting, managing, or farming the duties of excise, not capable of *sitting, voting, or acting as* a member. 11 & 12 *W.* 3. c. 2. s. 151. *Disney’s El. Stat.* 19.

25. Deputies, or clerks, of lord high treasurer;

Of the auditor, or tellers of the exchequer.

Of the chancellor of the exchequer;

Of the lord high admiral;

Of the commissioners of the admiralty;

Of the paymaster of the army or navy;

Of the secretaries of state;

Of the commissioners of salt, stamps, appeals, wine licences, hackney coaches, and hawkers and pedlars:



The officers in Minorca or Gibraltar, (except commissioned officers in regiments,) cannot be elected. 15 Geo. 2. c. 22. s. 1. *Disney's El. Stat.* 74.

26. Except treasurer or controller of the navy, the secretary of the treasury, the secretary of the chancellor of the exchequer, secretaries to the admiralty, under-secretary to any of the principal secretaries of state, deputy-paymaster of the army, or person having offices for life, or during good behaviour. 15 Geo. 2. c. 22. s. 5. *Disney's El. Stat.* 75.

27. No person shall be capable of being elected a member to serve in parliament, who is not of the age of twenty-one years. 7 & 8 W. 3. c. 25. s. 8. *Disney's El. Stat.* 15.

28. Public proof was given, at the nomination and election, that the candidate was under age; the sheriff returned him, he having the majority. The committee resolved, that his election and return were void. 1 Peckh. 527.

29. "That it is the opinion of the committee that *Andrew Stuart*, Esq. by the instrument of resignation executed at *Edinburgh* on the 18th of *October*, 1774, and delivered to *Mr. Cooper* on the 25th of the same month, was, at the time of his election, divested of the office of king's remembrancer in the Court of Exchequer, in *Scotland*." 2 Doug. 388.

30. "That the Hon *John Maitland* was

eligible to serve in parliament, notwithstanding his being in possession of the office of clerk of the pipe, in the Exchequer of *Scotland*, at the time of his election." 2 *Doug.* 450.

31. The judges, also, are ineligible to the House of Commons. *Simeon*, 29.

32. But the Master of the Rolls is eligible. *Simeon*, 29.

33. No person can be naturalized without an act of parliament; and no such bill can pass unless it contain a clause to disenable him to sit in parliament. 1 *Geo.* 1. *stat.* 2. *c.* 4. *s.* 2.

34. Aliens are ineligible. *Simeon*, 26.

35. Even though they are made denizens; which gives them, in most other respects, the rights of subjects from the date of the patent of denization: yet such grant does not make them eligible to parliament. *Simeon*, 26.

36. Persons deaf and *dumb*, are said to be ineligible; and idiots and madmen seem to be clearly so, as having no judgment, and therefore incapable of executing the trust. *Simeon*, 26.

37. But persons totally *blind*, have, in many instances, sat in parliament. *Ed.*

38. Persons attainted of treason or felony, being dead, in law, are ineligible. *Simeon*, 27.

39. It was, upon debate, finally resolved and ordered by the house, that Mr. *Huddleston*, (who was outlawed in twenty outlawries, p. 124.) was a person eligible, and well returned;

and that the same election, and return, should stand and continue in force. *Glanville*, 127.

40. Outlawry in *civil suits* does not render the persons outlawed ineligible. *Simcon*, 27.

41. Sir *Bulstrod Whitlocke*, indeed, speaks without distinction of persons attainted of treason and felony, and *outlaws* as ineligible; but it must be presumed, he means only outlaws in *criminal suits*. *Simcon*, 28.

42. Resolved, that a man who has been convicted of a libel may sit in the House of Commons; and that such a man, though expelled for a libel by one parliament, and declared ineligible, may yet sit in another. 1 *Pcckw.* 337.

43. Popish recusants were, after the reformation, frequently resolved to be incapable of a seat. And every person chosen, before he takes his seat must take the oaths of supremacy, allegiance and abjuration, and subscribe the declaration against popery. 30 *Car. 2. stat. 2 c. 1. s. 2, 3.* *Disney's El. Stat.* 218.

44. Prisoners in execution for debt, have in one instance been declared ineligible. *Simcon*, 33.

45. Persons abroad. A candidate in the *East Indies*, at the time of election, has in one instance, been declared ineligible by the house. And the resolution alluded to, seems against the letter of the writ; and probably before a committee would, at this day, have but little weight. *Simcon*, 34.

46. No person having been ordained priest or

deacon, or being a minister of the church of *Scotland*, is capable of being elected. 41 *Geo. 3. c. 63. s. 1. Disney's El. Stat.* 183.

47. Every person giving, or promising gifts, or bribing, “*is disabled and incapacitated upon such election to serve in parliament.*” 7 *W. 3. c. 4. s. 2. Disney's El. Stat.* 6.

48. The history of the case of Sir *Edward Coke* is well known. He together with Sir *Thomas Wentworth*, Sir *Francis Seymour*, Sir *Robert Philips*, Sir *Guy Palmer*, Mr. *Edward Alford*, and Sir *William Fleetwood*, being able and distinguished opposers of the arbitrary attempts of the crown, were appointed sheriffs, with the express intention of disqualifying them from being chosen to parliament. 4 *Doug.* 102.

49. Mr. Justice *Blackstone* says, “that sheriffs, mayors and bailiffs are not eligible in their respective jurisdictions, being returning officers.” 1 *Doug.* 439.

50. The returning officer is himself ineligible; for the words of the writ are, “*willing nevertheless, that neither you nor any other sheriff of this our kingdom be in anywise elected.*” *Heyw. Counties,* 3.

51. In the *Southampton* case, “Resolved, that it is the opinion of this committee, that J. F. being sheriff for *Hampshire* at the time of the last general election, was eligible to serve in parliament for the town of *Southampton.*” 4 *Doug.* 143.

52. Mr. M. returned for *Abingdon*, was sheriff of *Berks*; the return was disputed on the ineligibility of Mr. M. The committee determined, that neither the sitting member nor the petitioner were duly elected, and that the election was void. 1 *Doug.* 446.

53. There are instances of sheriffs returned for boroughs within their own counties, and allowed to sit, although objected to *at their election*, and petitioned against. 1 *Doug.* 454. *n.* (K.)

54. Bribery committed by a successful candidate, whose election has been declared void by reason thereof, disqualifies him from being elected at the ensuing election. 2 *Peckw.* 189.

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#### Sect. iv.—Taking the Poll.

1. In whatever way the election of knights of the shire is made, the sheriff is to pronounce who hath most lots, or hands or voices; and if he cannot determine in the first instance, with the consent of the freeholders present, and the party or the freeholders demand the poll, the sheriff cannot deny the scrutiny; “because,” says Lord *Coke*, “he cannot discern who be freeholders by the view, and then though the party would wave the poll, yet the sheriff must proceed with the scrutiny.” *Heyw. Counties*, 235.

2. If the poll be *demande*d, the sheriff has no discretion, he *must* grant it; for the statute of *William* is imperative: if the election be not determined on the view, “*but a poll shall be required,*” the sheriff shall forthwith proceed there to take it. 7 & 8 *W. 3. c. 25. s. 3. Disney’s El. Stat.* 12.

3. He or his under-sheriff must appoint such number of clerks to take the poll, as seem to him convenient. 7 & 8 *W. 3. c. 25. s. 3. Disney’s El. Stat.* 12.

4. Which clerks must be sworn by 7 & 8 *W. 3. c. 25. s. 3.*; but as no form of oath is given in the statute, the poll-clerks may be sworn as follows: “I do swear, that I will at this present election of a member (or members) to serve in parliament for the county of truly and indifferently take the poll and set down the name of each freeholder, and the place of his freehold, and for whom he shall poll, and to poll no freeholder who is not sworn, or put to his affirmation, if so legally required.” *Heyw. Counties,* 267.

5. Resolved, that the poll-clerks, at the late election for a burgess to serve in parliament for the borough of *Colchester*, were not sworn; and that such omission was contrary to law. 1 *Peck.* 507.

6. The poll-clerk must set down the name of the freeholder, and where his freehold lies: and may administer the freeholder’s oath to the

voter, if the voter *be required* by the candidate or candidates to swear. 7 & 8 *W. 3. c. 25. s. 3. Disney's El. Stat. 12.*

7. He must also set down the voter's place of abode, "*as he shall declare the same at the time he votes,*" and put "*Jurat.*" opposite the names of those who are sworn. 10 *Ann. c. 23. s. 5. Disney's El. Stat. 40.*

8. He must also administer the affirmation to a quaker, instead of oath, and enter "*affir-  
mat,*" against his name. 10 *Ann. c. 23. s. 8. Disney's El. Stat. 41.*

9. The sheriff or his deputy shall appoint for each candidates such one person *as shall be nominated to him by each candidate* to be inspectors of every clerk who shall be appointed to take the poll. 7 & 8 *W. 3. c. 25. s. 3. Disney's El. Stat. 13.*

10. Each candidate to be allowed a cheque-book to each inspector. 18 *Geo. 3. c. 18. s. 9. Disney's El. Stat. 34.*

11. In all cases, *except one*, since cheque-books were introduced, they with other evidence have been admitted to *contradict* the poll-books, where the mistake was pointed out in time. *Heyw. Counties, 314.*

12. A poll-clerk shall be appointed for every booth, to have one guinea a day at the expence of the candidates. 18 *Geo. 2. c. 18. s. 7. Disney's El. Stat. 83.*

13. Every poll must begin on the day it is

demand, or the next day, (unless on a *Sunday*, and then the day after.) Not to last more than fifteen days, *Sundays* excepted. If it continue to the fifteenth day, then it shall be finally closed at or before three o'clock on the same day. 25 *Geo. 3. c. 84. s. 1.* *Disney's El. Stat.* 150.

14. Unless prevented by *unavoidable accident*, the poll shall be kept open for seven hours at the least in each day, (except the first day,) between eight o'clock in the morning, and eight at night. 25 *Geo. 3. c. 84. s. 3.* *Disney's El. Stat.* 151.

15. The poll must therefore begin on the last day at eight o'clock in the morning, to allow seven hours before three o'clock in the afternoon. *Ed.*

16. Should the sheriff think it necessary to close the poll before three o'clock on the fifteenth day, he may proceed by proclamation, or consent of candidates; if it should be continued to the last hour appointed by statute, no proclamation is necessary. *Hoye's Counties*, 390.

17. Where the contest is very near, and the candidates are very urgent for the continuation of the poll, though but few voters remain to be polled, it is usual for the returning officer to fix a particular time, at a reasonable distance, for closing the poll. This is generally done by the consent and



agreement of all parties, as in the *Bedford* case; but may and in some cases, I apprehend, ought to be done without their consent, whenever the returning officer, exercising an honest and fair judgment, shall deem it reasonable. *Simeon*, 163.

18. *Stat. 13 Hen. 4. c. 7.* requires sheriffs and justices of the peace to repress riots with the power of the county, to record them when committed in their presence; and inflicts a penalty upon them of 100l. in case of neglect. See also *Stat. 17 Rich. 2. c. 8.* 1 *Peckw.* 88.

19. It seems to be agreed on all hands, that nothing but a necessity so strong as to supersede all law, could justify a returning officer in demanding the assistance of the military, or a commander in affording it. 1 *Peckw.* 89.

20. The committee determined "that a voter who has been admitted by the sheriff or the poll-clerk, to vote at the wrong booth, does not thereby lose his vote." 2 *Peckw.* 59.

#### *Commissioners for administering Oaths.*

21. When a poll is demanded, the returning officer shall at the *request in writing* of any candidate, under his hand, appoint two or more persons to administer the oaths of allegiance, supremacy, declaration of fidelity, the

oath of abjuration, and the affirmation and declaration of the effect thereof; and to certify the names of such voters who have done so.

34 *Geo. 3. c. 73. s. 1. Disney's El. Stat.* 167.

22. The commissioners to be sworn, (see the form of the oath in the act;) which oath the returning officer may administer. 34 *Geo. 3. c. 73. s. 1. Disney's El. Stat.* 169.

23. Voter to apply to the commissioners before voting, and have a certificate of his so swearing or affirming; (the form of the certificate in the act:) on producing the certificate, the voter may vote. 34 *Geo. 3. c. 73. s. 2. Disney's El. Stat.* 169.

24. Voters offering to vote without producing the certificate, are to retire and take the oaths before the commissioners. 34 *Geo. 3. c. 73. s. 3. Disney's El. Stat.* 170.

25. If the original number of commissioners be not sufficient, the returning officer may appoint more, at *the request, in writing*, of any candidate then present. 34 *Geo. 3. c. 73. s. 4. Disney's El. Stat.* 171.

26. The returning officer to provide places for the commissioners, to be open eight hours every day, between eight in the morning, and eight in the evening, till the close of the poll; to provide a proper number of printed forms of declaration, of fidelity, and certificates. 34 *Geo. 3. c. 73. s. 5. Disney's El. Stat.* 172.

27. The returning officer, if notice *in writ-*

*ing be given him three days before the election,* shall provide booths, &c. for the commissioners. 34 *Geo. 3. c. 73. s. 6. Disney's El. Stat. 173.*

28. In case there are not proper places sufficient for the commissioners at the town or place, the sheriff must erect booths, &c. and charge the expences on the candidates, and allow a compensation of a guinea a day to the commissioners. 34 *Geo. 3. c. 73. s. 6. Disney's El. Stat. 173.*

29. When a poll is demanded, and the sheriff required in writing by any candidate, he shall appoint commissioners for administering the oaths, who are empowered and required to *administer all the oaths, and take the declarations and affirmations now required by law to be taken and made by voters at elections of members to serve in parliament.* A form of oath for the commissioners. This act is *now* the proper one to act upon. 42 *Geo. 3. c. 62. s. 1. Disney's El. Stat. 186, 189.*

30. The bribery oath is to be administered before polling, as directed by the 2 *Geo. 2. c. 24. 43 Geo. 3. c. 74. s. 1. Disney's El. Stat. 192.*

*Casting up the Poll, closing it, and Scrutiny.*

31. The poll-books ought not to be closed, until all the voters present, i. e. who come in during the continuance of the poll, and offer their voices, have polled. *Simon*, 163.

32. In general when the number of voters who polled in the course of a day were much diminished, and dropped in singly; after considerable intervals of time, the sheriff gave notice that at an appointed hour, he would proceed to make the usual proclamations to close the poll. These proclamations, generally three in number, and made at small intervals from each other, purported that the poll would be finally closed at a certain hour of that or some future day, sufficiently distant, under the circumstances, for all the freeholders then unpolled to come in. From the late case of *Bedfordshire*, it appears, by the usage in that county, if a single freeholder tenders his vote in the intervals between the several proclamations, they must all be made over again: so it happened repeatedly at that election, and so is the usage in many, perhaps in most other counties. The effect also would be the same if any voters were to come in after the last proclamation, and before the time mentioned for finally closing the poll was expired. This seems to be a

most absurd and inconvenient rule; for it gives any of the candidates, whose object is delay, by waiting till the second or third proclamation is made, and polling a single vote, an opportunity to protract the election almost *ad infinitum*; and in this manner the candidates for the county of *Bedford* for some time rendered ineffectual every effort of the sheriff to close the poll. *Hcyw. Counties*, 386.

33. The returning officer shall immediately, or on the day next after the final close of the poll, truly, fairly, and publicly declare the name or names of the person or persons having the majority of votes on the poll, unless a scrutiny be demanded. 25 *Geo. 3. c. 84. s. 1.* *Disney's Ed. Stat.* 150.

34. In the *Middlesex* case (1805,) it became a question, whether objected votes, which were reserved for discussion, could be put on the poll-books after three o'clock on the fifteenth day. The sheriffs had declared the poll. It was admitted, that the sheriffs might alter their opinion as to the numbers, and reverse their decision if they thought proper. 2 *Peck*, 345. The committee determined, that Mr. M. was not duly elected; that Sir F. B. (who had the minority at three o'clock on the fifteenth day,) was duly elected: it appearing that if the votes had been admitted, which were tendered before three, examined and put on the poll *afterwards*, Sir

*F.B.* would have had the majority. 2 *Peckw.* 370.

35. If it appears that there is an equality of votes, the returning officer has not a casting vote. *Simeon*, 161.

36. There seems no objection to the sheriff *closing* the poll on the fiftænth day, at *three* o'clock, and examining disputed or reserved votes *then* on the poll, during that day and the next, and then casting up and declaring the majority. *Ed.*

37. There should, however, be the utmost caution used before such an alteration, (i.e. in the poll-books,) and very clear evidence to justify it: for the poll-clerk is sworn; and his book, whilst it remains unaltered, is the best evidence of the vote. *Simeon*, 157.

38. But not the *only* evidence: for parol evidence has been admitted to prove for what property a vote was given; though no proof of the poll-books being destroyed or lost, nor any notice on the other side to produce them. *Simeon*, 157. (n.) *quot. Luders.*

#### *Mistakes in the Poll Book.*

39. Any mistake or improper conduct of the sheriff or poll-clerks in conducting the poll, does not avoid the election; if in other respects there has been a good and substantial election. *Heyw. Count.* 342.

40. In all the cases except one, since cheque books were introduced, they, together with other evidence, have been admitted

to contradict the poll-books, where the mistake was pointed out in a reasonable time.

1 *Heyw. Counties*. 344.

41. Where the poll-clerk had neglected to put the word "Jurat." opposite to the voter's name, and the checque-clerk was produced to prove he had been sworn; the committee resolved, *nem. con.* that evidence be permitted to prove he was sworn to his freehold. *Heyw. Counties*, 348.

42. Nature of freehold "tenement:" it was objected, that the description was uncertain, and would apply to any species of freehold; but the committee resolved to take it in its more familiar sense, as a house; and held the description to be sufficient. 2 *Peckw.* 55.

43. Where the name, &c. taken down by the poll-clerks, bore a similarity in point of sound to the real description of the voter, the committee decided, in each case, whether the difference should be considered to be the mistake of the clerk, or a mis-description on the part of the voter; and in all cases where the similarity of sound was such as to justify them in the former supposition, they allowed the vote. 2 *Peckw.* 52.

44. The same evidence (i. e. of the voter) was admitted in another case, (to contradict the poll-book;) but there the checque-books agreed with the parol evidence against the poll-book. *Simcon*. 158.

45. Joseph Jefferson described the situation of his freehold to be "St. Ann's, Solo," and the nature of it, "preferment in the church." The committee held this description to be sufficient; but required of the party who supported the vote, to shew the kind of preferment in respect of which Mr. Jefferson claimed a right to vote. 2 *Peck*. 55.

46. And where the checque-books agreed with the poll-books, the voter *himself* was not suffered to give evidence to contradict the poll. *Simeon*, 159.

47. The case of *Bedford*, 1784, establishes the power of the sheriff to correct all mistakes in the poll-books, *where the checque-books do not agree with them*, and where he is applied to in due time for that purpose; but in the same committee, a resolution being proposed, "that the counsel be admitted to produce evidence to correct mistakes upon the poll-book, although no such evidence was tendered to the sheriff"—it passed in the negative. *Heyw. Count.* 351.

48. Where the poll is once declared and acknowledged, the election is complete. *Simeon*, 164.

49. The poll, when regularly closed, and the numbers declared, can never be revived or continued, either by the sheriff or any other person. *Heyw. Counties*, 399.

50. If the returning officer die during the



poll, his successor may execute and finish. *Simeon*, 154.

### *Scrutiny.*

51. The sheriff must make a return on closing the poll, and declaring the majority; unless he deem it necessary to grant a scrutiny on the requisition of any candidate or two electors. 25 *Geo. 3. c. 84. s. 1.* *Disney's El. Stat.* 150.

52. If the sheriff proceeds to a scrutiny he cannot do it after a proclamation of the majority without an adjournment. Where he has done otherwise, it hath been held a breach of privilege; for which the returning officer was committed. *Simeon*, 162.

53. When he does grant a scrutiny, he must decide the votes alternately. 25 *Geo. 3. c. 84. s. 2.* *Disney's El. Stat.* 151.

54. During the continuance of a scrutiny, the sheriff may administer *an oath* to any person whatsoever *consenting* to take the same, touching his right to vote, or any thing material to the scrutiny. 25 *Geo. 3. c. 84. s. 6.* *Disney's El. Stat.* 153.

55. It may be observed, that through the omission of some words in the 6th clause (of 25 *Geo. 3. c. 84.*) the returning officer has no power to take the affirmation of a quaker; and yet the 7th clause provides for the pu-

nishment of a quaker affirming falsely. *Heyw. Count.* 421.

56. The scrutiny must be finished in time for the return to be made, which, *on a vacancy* during prorogation, is (by 25 *Geo. 3. c. 84. s. 1.*) thirty days. *Heyw. Count.* 445.

57. The inconveniences of the *Westminster* case, (1784,) induced the legislature to pass the 25 *Geo. 3. c. 84.* for regulation of polls and scrutinies; and by the first section the provisions of the 10 & 11 *Will. 3. c. 7.* requiring sheriffs and other officers to make a return of members on the day appointed for the meeting of the parliament, was extended to returning officers of all descriptions; and after having enacted, that the returning officer might proceed upon the scrutiny, it goes on: "but so as that in all cases  
 " OF A GENERAL ELECTION, every return-  
 " ing officer, or *officers having the return of a*  
 " WRIT, shall cause a return of a member or  
 " members to be filed in the crown office, on  
 " or before the day on which such writ is  
 " returnable." *Heyw. Count.* 439.

58. The 25 *Geo. 3. c. 84. s. 1.* restrained the discretionary powers founded upon the indefinite terms of the writ; and enacted, that returning officers for counties or cities and boroughs, may proceed to a scrutiny:  
 " so that in case of any election upon a writ

“ issued DURING A SESSION OR PROROGA-  
 “ TION OF PARLIAMENT, and a scrutiny being  
 “ granted as aforesaid, then that a return of  
 “ a member or members shall be made *within*  
 “ *thirty days after the close of the poll* (or  
 “ sooner if the same can conveniently be  
 “ done.”) *Heyw. Counties*, 446. *Disney's*  
*El. Stat.* 151.

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Sect. v.—Voters—Freeholds.

1. THE statute of *Hen. 6.* by the word *freehold* requires every voter to have an estate held by free tenure, as opposed to base or servile tenure; but that is not all: for this word is also descriptive of the *interest* the tenant has in the land; and it has been always construed in this statute to mean, not only that the *tenure*, but the *interest* of the voter, shall be freehold. *Heyw. Count.* 26.

2. All tenures are now turned into free and common socage (except tenures in frank-almoin, any tenure by copy of court roll, and the honorary services of grand serjeanty) by 12 *Car. 2. c. 24.* *Heyw. Counties*, 26. (n).

3. No person who holds his estate by *copy of court* shall be entitled *thereby* to vote at

the election of any knight or knights of the shire within that part of *Great Britain* called *England*, or principality of *Wales*. If he does, his vote is void ; and he incurs a penalty of 50l. 31 *Geo.* 2. c. 14. s. 1. *Disney's El. Stat.* 98.

4. Tenants in ancient demesne, therefore, holding *by copy of court roll*, as well as copyholders, are excluded by this statute, (31 *Geo.* 2. c. 14.) from voting ; as clearly as, by the expression “ any tenure by copy of court roll,” they are excepted out of the operation of the statute of *Charles 2.* *Heyw. Counties*, 33.

5. It is laid down generally by Lord *Coke* that freeholders in ancient demesne have no right to vote. *Comyns*, in his *Digest*, says, “ if freehold in ancient demesne, he may elect ;” at the same time he notes Lord *Coke's* opinion to the contrary. Mr. J. *Blackstone* does not exclude freeholders in ancient demesne from exercising that franchise. *Simmon*, 94.

6. Customary freeholds have been admitted to vote. In the *Gloucestershire* case, 1777, after counsel had been heard at great length, the committee resolved “ that J. B. “ a customary and ancient demesne tenant of “ the manor of *Dymock*, according to the “ custom of the manor, had such a freehold

“ therein as entitled him to vote at the last  
 “ election for the county of *Gloucester*.”  
 The numbers were eight to five; and the  
 chairman, who voted for the question, ob-  
 served, that it appeared to him of the most  
 doubtful nature; and that the arguments  
 were so forcible on each side that he was  
 determined solely by the principle, that *where*  
 the right was not clearly ascertained, he  
 should give, rather than take away the fran-  
 chise. *Heyw. Count.* 41.

### *Value.*

7. No person shall vote without having a  
 freehold estate in the county for which he  
 votes, of the clear yearly value of forty shil-  
 lings, over and above all rents and charges  
 payable out of, or in respect of the same.  
*18 Geo. 2. c. 18. s. 5. Disney's El. Stat.* 81.

8. No public or parliamentary tax, coun-  
 ty, church, or parish-rate, or duty, or any  
 other tax, rate or assessment whatsoever, to  
 be assessed or levied upon any county, divi-  
 sion, rape, lathe, wapentake, ward, or hun-  
 dred, is to be deemed *a charge* within this  
 act. *18 Geo. 2. c. 18. s. 6. Disney's El.*  
*Stat.* 82.

9. The *Bedfordshire* committee (in 1773)  
 came to a general rule that the value of a  
 landed estate, in right of which the *owner*

votes, is the rent which a *tenant* would give for it, and not what the owner occupying it himself may possibly acquire from it. *Heyw. Counties*, 86.

10. No person shall vote for lands not charged or assessed to public taxes in the same proportion as lands of 40s. per ann. value in the same parish. 10 *Ann. c.* 23. s. 2. *Disney's El. Stat.* 38.

11. The freeholder's oath, and the enquiry which the sheriff may make of each voter, how much he may expend by the year, are now only the criterions given by any statutes to ascertain the value at the poll. *Heyw. Count.* 89.

12. If the tenant pay land-tax, it shall be added to the rent, but not church or poor tax. *Simcon*, 75.

13. Where the landlord had let for fifty shillings, and taken receipt as for thirty shillings rent only, he was entitled to prove the real rent to let in his vote. *Simcon*, 75.

14. The tenant was let in to prove the value under forty shillings, though the voter had sworn to his qualification. *Simcon*, 75.

15. Dower not claimed for some years, was presumed discharged or released; and the value of the freehold not reduced by it. *Simcon*, 75.

16. In the *Bedfordshire* committee (1775), R. S. was objected to as having voted for a

freehold of 9l. a year, charged with 220l., the interest of which sum reduced the annual produce to less than forty shillings a year. The case was fully argued: and the committee resolved, “that the interest upon a mortgage, “the mortgagor being still in possession, is “such a charge upon the estate, within the “meaning of the statutes, as to affect the “rights of the voter.” *Hycw. Count.* 93.

17. The same committee also resolved, “that the interest of a mortgage (which is “charged upon the estate *in right of which a* “*voter voted*) being established by evidence, “so as to reduce the value of the estate to “less than forty shillings per ann., does “invalidate the vote; and that such “evidence is conclusive, notwithstanding “any other property possessed by the voter.” *Hycw. Count.* 94.

18. Another committee, (*Cricklade*, 1775.) resolved “that a mortgagor in possession of “land of the value of forty shillings a year, “and the devisee in possession of lands of “the value of forty shillings a year, devised “subject to the payment of debts and legacies, *are* entitled to vote.” *Hycw.* 94.

#### *Freehold Interest.*

19. A freehold interest in land, is such an interest as must continue for the life of the

holder, or of some other person, or for an uncertain duration; which, as it may possibly last for life, is, in contemplation of law, equal to a life-estate. *Simeon*, 72.

20. This rule, however, has some exceptions; as in the case of tenant by statute staple, statute merchant, or elegit; where the interest of the holder, though indeterminate by any express limitation, yet follows the nature of the debt, and goes to the personal representative. *Simeon*, 72, 73.

21. Where a man has been *in possession* for so long a time, that he cannot be disturbed by an action of ejectment he may be allowed to vote. *Heyw. Count.* 45.

22. A tenant in fee-simple has the highest interest which a subject can have in an estate. *Heyw.* 46.

23. A tenant in tail, after possibility of issue extinct, has a life interest. *Heyw.* 48.

24. Tenant by the courtesy of *England* has a life interest: the requisites to make such an estate are; marriage, seisin of the wife in fee or tail, issue, and death of the wife. *Heyw.* 49.

25. Title accruing after election begun is no objection. *Simeon*.

N. B. This must be understood of titles not within the splitting act, 7 & 8 W. 3. c. 25. *Ed.*



26. Husbands of women entitled to dower, or thirds out of the estates their former husbands *died seised or possessed of*, may vote in respect thereof, though not set out by metes and bounds. 20 *Geo. 3. c. 17. s. 12. Disney's El. Stat.* 125.

27. But where the widow was entitled to dower out of estates conveyed away or disposed of, during the first husband's life, the dower does not give the second a right to vote. *Heyw. Count.* 57.

28. An estate for *any term of years*, however long, determinable upon lives, though in the common course of human life it must last them out ten times over, is not a freehold, but a lease for years, determinable on a life or lives. *Heyw. Count.* 60.

29. But a person seised of a freehold interest, though only in reversion or remainder, may vote if he receive forty shillings rent from it in possession; but if lands are let to a person for life, reserving no rent, or less than forty shillings by the year, the grantee cannot vote during that term; but if he lets such lands only for term of years, without any rent at all, or under forty shillings per ann. reserved, he may vote in respect of the freehold in him. *Heyw. Counties.* 61.

*Trustee or Mortgagee.*

30. No trustee or mortgagee to vote in respect of *that* estate, unless in actual possession of the estate; but the mortgagor, or *cestui que trust* in possession, shall vote. 7 & 8 W. 3. c. 25. s. 7. *Disney's El. Stat.* 14.

31. Most questions relating to trust estates, which arise at county elections, will admit of easy solution, if the relative situation of the parties be attended to. When it is once settled whether a person claiming to vote is trustee, or *cestui que trust*, the difficulty will be generally removed. *Hoyw. Count.* 64.

*Equitable Title.*

32. Though the purchaser himself cannot gain a right to vote unless he has been a twelvemonth in possession, and has been rated to the land tax six months before; yet if he dies within a week after possession taken under such equitable title, his heir or devisee, as it should seem, would have the right of voting for such equitable estate, under the saving clause in the statutes, (18 G. 2. c. 18. 20 G. 3. c. 18. s. 1.) if the freehold has been assessed to the land tax within two years before; although the ancestor, at the time of his death, had no such right complete. *Simon*, 91.

33. Where a person has agreed to sell, and another has agreed to purchase certain premises, and that agreement has been reduced to writing, (which it must be by the stat. of frauds, *Ed.*) whether under stamp or not, the *vendee* being in possession of the estate, and taking the rents and profits by virtue of the agreement, seems to have an equitable freehold, and to have a right to vote. *Heyw. Count.* 65.

*Joint-tenants, &c.*

34. Joint-tenants, and tenants in common of freehold estates, and freehold interests, have a right to vote. But the 7 & 8 *W.* 3. c. 25. s. 7. has provided that no more than one voice shall be admitted for the same house or tenement. *Heyw. Count.* 69.

35. If two joint-tenants agree to part their lands, and hold them in severalty, they are no longer joint-tenants; for they have now no *joint-interest* in the whole, but only a several interest respectively in the several parts. 2 *Black. Com.* 185.

*Clergy.*

36. From the 12 *Anne*, taken with the prior act, (10 *Ann.* c. 23,) it is clear that the

legislature *then* considered the right of parsons and vicars coming to lands, rents, tithes, &c. by presentation to a benefice to be clear and undisputed. *Heyw. Count.* 77.

### *Offices.*

37. The statute of *Hcn.* 7th, requires voters to have a qualification in “ free land or tenements to the value of 40s. by the year.” By the 18 *Geo.* 2. *c.* 18. *s.* 3. no person shall vote for the electing of a knight or knights of the shire, “ in respect or in right of any “ messuages, lands, or tenements,” which have not been assessed to some aid, granted by a land tax, twelve calendar months next before such election. The word tenement though in its vulgar acceptation it is applied to “ houses and other buildings,” yet in its original and proper legal sense, it signifies every thing that may be holden, provided it be of a permanent nature ; whether it be of a substantial and sensible, or of an unsubstantial ideal kind. *Heyw. Count.* 43.

38. *Henry Collingwood Selby* voted for the office of the clerk of the peace for *Middlesex*. He was assessed “ for his office of “ clerk of the peace for the county of *Middlesex*, 1200l. per ann., 55l.: the committee

“determined” that *H. C. Selby* not having freehold interest in house or land in right of his office, is a bad vote. 2 *Peckw.* 92-3.

39. Therefore persons holding offices in fee, or for life, whether they concern lands or not, are said to have a freehold therein, and being duly rated to the land tax, are entitled to vote at the elections of knights of the shire. *Heyw. Count.* 43, 44.

40. Schoolmasters and parish clerks, generally hold their places for life; but curates (not applying the application to those who hold perpetual curacies) are as generally removeable at the will of those clergymen who appoint them. Hence schoolmasters, and parish clerks, seised of land by virtue of their offices, are usually admitted to vote, and curates not. *Heyw.* 80.

41. By the *Bedfordshire* committee, schoolmasters were always presumed to have estates *for life*, unless the contrary appeared from the nature of their appointment. *Ibid.* (n.)

42. But schoolmasters and parish clerks stand upon a better ground than dissenting ministers, who are appointed and removed at the will of the congregation, however capriciously exercised; whereas a school-

master or parish clerk had each a freehold right, *quam diu se bene gesserit*, and are not removeable but for good and sufficient cause. *Simeon*, 82.

43. The stat. 18 *Geo.* 2. shall not extend (*inter alia*) to any person who becomes entitled to lands "by promotion to an office" "within twelve calendar months next before such election," where the predecessor has been rated within two years. 18 *Geo.* 2. c. 101. s. 2. *Disney's El. Stat.* 118.

44. *John Coppinger*, sub-register of the court of Chancery. This office has *no land or salary arising* from land attached to it, nor any house except for the business of the office. The emoluments entirely arise from the fees paid by the suitors of the court. The counsel for the petitioner understanding the committee to have determined, that a seat connected with an office (the profits consisting of *fees* only,) does not sufficiently give to the office the nature of real property, gave up this vote, and it was declared bad. *Middl. 2 Peckw.* 100.

45. If an office be granted to a man to have and enjoy *so long as he shall behave himself well in it*; the grantee hath an estate of freehold in the office; for since nothing but his

misbehaviour can determine his interest, no man can prefix a shorter time than his life, since it must be his own act, (which the law does not presume to foresee.) which only can make his estate of shorter continuance than his life. *Bac. Abridg. Tit. "Offices and Officers."* (H.)

*Possession.*

46. No person shall vote for a freehold estate without having been in the *actual possession*, or in the receipt of the rents and profits above twelve calendar months; unless the same came to him by descent, marriage, marriage settlement, devise, or promotion to a benefice in a church or office. 18 *Geo. 2. c. 18. s. 5.* *Disney's El. Stat.* 81.

47. The act (i. e. 18 *Geo. 2. c. 18.*) does not specify the time whence the twelve months are to be computed, whether from the day appointed for the election, or the day on which the voter gives his vote. But the natural construction seems to be, that it shall be reckoned from the day when he takes the oath, and *actually gives* his vote. *Heyw. Count.* 111.

48. It often happens that some of those who have voted die, and the son has been

always allowed to vote at the same election, for lands for which the father had voted before; although it came to him by devise, descent, or marriage, even after the poll begun. *Heyw. Counties*, 112.

49. Rev. G. Bailey. It was admitted that a person married *during the election*, had a right to vote at the same election for premises to which he became entitled by marriage. *2 Peckw.* 115.

50. When the voter claims to vote under an interest accruing within the year, by descent, devise, or marriage, or marriage settlement, his **TITLE**, not his mere *possession*, is the ground of his right to vote. *Simeon*, 73.

51. By *title* I mean right of possession, which, I presume, it is sufficient for him to prove, without being compellable to shew a right of property as if it were a real action. *Simeon*, 73.

52. The words of the stat. are, “ unless “ the same *came to him* within the time aforesaid (i.e. twelve calendar months) by descent, marriage, &c.” If the ancestor or deviser, or settler, therefore, were seised of a freehold, whether rightfully or wrongfully, the estate *would come* by descent, will, or marriage settlement, and entitle him to vote. *Simeon*, 73.



*Assessments.*

53. No person can vote unless his freehold has been assessed “towards some aid granted or to be granted to his majesty, his heirs or successors, by a land tax in Great Britain, twelve months next before such election.” 18 *Geo. 2. c. 18. s. 3.* *Disney’s El. Stat.* 80.

54. The most obvious construction is, that the computation is to be from the day when the voter takes his oath, and gives his vote. 3 *Doug.* 234. *Simcon*, 62.

55. The time is reduced to six months by 20 *Geo. 3. c. 17. s. 1.* *Disney’s El. Stat.* 117.

56. This act not to extend with respect to rating and assessing, to annuities, or fee farm rents (duly registered) issuing out of lands rated or assessed as therein directed. 20 *Geo. 3. c. 17. s. 2.* *Disney’s El. Stat.* 118.

57. Persons *becoming entitled* by descent, marriage, marriage settlement, devise, promotion to a benefice or office, within twelve months before *such election*, may vote, provided his qualification has been assessed to the land-tax in the name of his predecessor, within two years before *such election*. 20 *Geo. 3. c. 17. s. 2.* *Disney’s El. Stat.* 118.

58. Commissioners of land-tax to deliver to assessors a printed form of an assessment.

who are to make their assessments according thereto, and a duplicate to be stuck on the door of the parish church. Qualified persons whose names are omitted may appeal to commissioners, who are to amend the assessment where defective.

59. An amended duplicate to be returned to the assessor, and delivered to the clerk of the peace at the next quarter sessions. 20 *Geo. 3. c. 17. s. 3.* *Disney's El. Stat.* 119, 120.

60. Penalty on assessors, &c. who shall alter, or neglect to deliver, any duplicate as above directed. 20 *Geo. 3. c. 17. s. 4.* *Disney's El. Stat.* 121.

61. The court may fine certain officers for neglect. 20 *Geo. 3. c. 17. s. 5.* *Disney's El. Stat.* 121.

62. In case the chief constables make oath that assessors neglected to deliver the said duplicates to them, then the fines shall be levied on the assessors, except they deliver in the duplicates within ten days after notice. 20 *Geo. 3. c. 17. s. 6.* *Disney's El. Stat.* 122.

63. But if assessors within the said time shall produce to the clerk of the peace the chief constable's receipt, then the fine shall be levied on the said constable. 20 *Geo. 3. c. 17. s. 7.* *Disney's El. Stat.* 123.

64. Fines to be paid to the treasurer of the county. 20 *Geo. 3. c. 17. s. 8.* *Disney's El. Stat.* 124.

65. When assessments are not made, and returned to the clerk of the peace, the justices may order them to be made and returned forthwith. 20 *Geo. 3. c. 17. s. 9. Disney's El. Stat.* 124.

66. Persons aggrieved may appeal to the quarter sessions, giving ten days notice. 20 *Geo. 3. c. 17. s. 10. Disney's El. Stat.* 124.

67. Any person whose name, on appeal, shall appear to have been improperly left out of any assessment, shall be deemed to have been rated therein. 20 *Geo. 3. c. 17. s. 11. Disney's El. Stat.* 125.

68. Duplicates may be inspected, clerk of peace to deliver signed copies to *any person who shall demand the same*, and being paid sixpence for every three hundred words. Duplicates legal evidence. 20 *Geo. 3. c. 17. s. 13. Disney's El. Stat.* 126.

69. Clerk of the peace or his deputy to attend at every election of knight of the shire with original duplicates, at the request of any candidate or his agent, such candidate to pay him 2*l.* 2*s.* per day's attendance, and 1*s.* 6*d.* per mile for travelling charges. 20 *Geo. 3. c. 17. s. 14. Disney's El. Stat.* 127.

70. After issuing of the writ, clerk of peace shall attend *gratis* from 9 to 3 o'clock each day where the records of the county are

kept, to make copies of duplicates. 20 *Geo.* 3. c. 17. s. 15. *Disney's El. Stat.* 127.

71. Penalty on clerk of the peace or his deputy making default. 20 *Geo.* 3. c. 17. s. 16. *Disney's El. Stat.* 128.

72. Recovery of penalties. 20 *Geo.* 3. c. 17. s. 17, 18, 19. *Disney's El. Stat.* 129.

73. Form of Assessment, (by 20*Geo.* 3. c. 17.)

County of N. to wit. } An assessment made in  
 For the parish of } pursuance of an act of  
 in the said } parliament passed in  
 county } the year of his  
 majesty's reign, for granting an aid to his  
 majesty by a land tax, to be raised in Great  
 Britain, for the service of the year 17

Names of pro- prietors.	Names of occu- piers.	Sums assessed.
A. B.	himself	—
A. B.	C. D.	—
E. F.	C. D.	—
C. D.	G. H.	—
J. K. } & } L. M. }	N. O.	—
P. Q.	{ R. S. } & } { T. U. }	—

Signed this

day of \_\_\_\_\_ 17\_\_\_\_  
 by us A. B. }  
 C. D. } Assessors

74. Any person (whose vote is not objectionable on other accounts) may vote, although the name of the *tenant* is not inserted in the form prescribed by 20 *Geo. 3. c. 17.* 30 *Geo. 3. c. 35. s. 1.* *Disney's El. Stat.* 164.

75. He may also vote, if the tenant's name is in the assessment, and his *own is not.* 30 *Geo. 3. c. 35. s. 2.* *Disney's El. Stat.* 165.

76. In the *Middlesex* case, 1804, the following rule was entered on their minutes, "that if either the name of the owner, as owner, or that of the occupier, as occupier, of the freehold voted for, appears rightly upon the assessment; that is, if either be right, though the other be wrong, such voter shall be deemed rightly assessed." 2 *Peckw.* 65.

77. Upon a suggestion that there was a clerical mistake in the duplicate left with the clerk of the peace, the *Bedfordshire* committee, as before stated, allowed the assessor to produce the original rate to prove the mistake. *Heyw. Counties.* 129.

78. Where the name in the original assessment, and in the duplicate copy, differed, the committee determined to abide by that in which the name of the voter was rightly spelt. 2 *Peckw.* 68.

79. J. T.'s freehold consisted of land *and houses.* It was the custom of the parish to

assess *land only*, and his land was neither worth, nor assessed at forty shillings a year, but with his houses it was of more value. His vote was held good. *Heyw. Count.* 133.

80. William Paine, the *owner* of a freehold, was rejected because the assessment was of *Jane Sloper* owner, and *William Paine* tenant, he being so at the time of the assessment made. *Heyw. Count.* 134.

81. Two schoolmasters voted, each for land and tythe, where the estate was assessed under the name of "charity land." *Heyw. Count.* 137.

82. J. R. was one of two joint-tenants of the freehold. In the assessment, *the other* was assessed as the proprietor of the estate for which J. R. voted. His vote was disallowed. *Middl. 2 Peckw.* 76.

83. Assessment in the name of one joint-tenant as occupier, bad. *Middl. 2 Peckw.* 78.

84. It was determined, both in the *Bedfordshire* and *Cricklade* cases, that if one joint-tenant is named in the rate, his vote shall be received; but he who is not rated, shall have no vote. *Heyw. Count.* 139.

85. The third section of 20 *Geo. 3. c. 17.* states, if any person or persons (renting or holding, or occupying any messuages, tenements, &c.) shall hold lands, tenements, &c.

“ belonging to different owners ; “ the same  
 “ shall be distinctly rated and assessed in such  
 “ assessments, that the proportion of the  
 “ land-tax to be paid by each separate owner  
 “ or proprietor respectively, may be known  
 “ and ascertained.” These words evidently  
 relate only to cases where the same tenant rents  
 premises from different landlords, and then  
 the property of each landlord shall be distinct-  
 ly rated. *Hope. Counties*, 139.

*Variance in Poll and Assessment.*

86. The committee determined, “ that where  
 “ the christian name of a voter varies on the  
 “ poll, and on the assessment books, the  
 “ party who supports the validity of the  
 “ vote shall be called upon to justify such  
 “ variation.” *Middl. & Peckw.* 67.

87. Where no explanatory evidence was  
 given, the vote was declared bad: in some cases,  
 the variation was justified by calling the as-  
 sessor or collector of the land-tax, to declare  
 that the voter was the person whom they had  
 actually meant to assess, and that they had  
 mistaken his name. *Middl. & Peckw.* 67.

88. With regard to *surnames* which varied  
 on the poll, and in the assessment, the com-  
 mittee gave their opinion upon each particu-  
 lar case, and whether they should be consider-  
 ed as different names, or the same differently

spelt, and taken down by the poll-clerk, according to his apprehension of it as it was pronounced to him by the voter. *Middl. 2 Peckw. 67.*

89. *Thomas Francis Jennings*; in the assessment, *Thomas Jennings*. The committee required proof that the person named in the assessment, was the voter. *Contra, 2 Luders 516. Middl. 2 Peckw. 68.*

90. In cases where, though the estate voted for was in fact rated in the name of the tenant given in at the poll, some other person was assessed as the owner of it: the committee made a rule, that the title of the voter should be proved. This rule was first adopted in the case of *William Biddulph*, who had voted for premises assessed in the name of the Cooper's company as proprietors. *Middl. 2 Peckw. 68, 69.*

91. Where there was no *proprietor* assessed, and the *occupier* on the poll and on the assessment were the same; no further evidence was required.

Where the name of the *proprietor* on the poll and on the assessment was the same, and the name of the tenant differed; no further evidence was required.

Where no *proprietor* was assessed, and the occupier's *christian name* was omitted, or put with initials only, evidence was required to



shew that the christian name of the *occupier assessed*, was the same with that of the *occupier on the poll*. (See ante, pl. 87.) But if the name was at *full length on the assessment*, and put with *initials on the poll*, no explanation was held necessary. *Middl. Peckw* 70.

92. Voter on the poll, voted as "master of the Charter House." He was not assessed for *his office*, but for *a house* which he *held by virtue of his office*: and he had redeemed the land tax in respect of that house, some time before the election. The committee, after some deliberation, determined, "that *W. Ramsden* having described himself as "master of the Charter House on the poll; "and it being shewn that the land tax of "his house was redeemed, is a good vote." *Middl. 2 Peckw*. 72

93. 19th *March*. T. L.; nature of freehold on the poll, "ground;" assessed for a house. The committee disallowed the vote. *Middl. 2 Peckw*. 71.

94. The assessment did not distinguish what the nature of the property was: as whether it consisted of house or land, &c. The assessor was asked, whether it was not an house; but the committee would not permit the question to be put to him. The vote was determined to be good. *2 Peckw*. 73.

95. Occupier on the poll "*John Gibson*?"

occupiers assessed "*Prior and Co.*" A witness proved, that *John Gibson* was one of the partners. But the committee held the assessment to be insufficient, and the vote to be bad. 2 *Peckw.* 78.

96. The committee determined, that "no proof whatever of the actual value of the freehold could arise from entries on the books of assessment." The same determination took place in several other cases. 2 *Peckw.* 105.

97. *James Crouch.* In that copy of the rate which was given to the clerk of the peace, and by which the court proceeded, he did not appear to be assessed; but in one of the duplicates in the hands of the commissioners of the land tax, he was so. It was contended, that all the duplicates of the assessment were equally authentic; good 2 *Luders.* 527.

98. 25th *Feb.* *John Williams*, in the original assessment; "Rev. Mr. *Williamson*" in one of the copies delivered out by the clerk of the peace; the same name appeared in another, "Rev. Mr. *Williams.*" By stat. 20 *Geo.* 3. c. 17. s. 13, every copy so delivered out is made evidence. The committee determined to abide by that in which the voter was rightly named. It was also agreed, that it was incumbent on the party who supported the

vote, to call the assessor to prove that he meant to assess *John Williams* by the name of the Rev. Mr. *Williams*. 2 *Peckw.* 68.

*Situation of Freehold.*

99. 27th *February*. *W. F. Green*, situation of freehold, on the poll, "*Edgware*;" assessed in *Hendon*. The vote was declared bad. *Middl.* 2 *Peckw.* 71.

100. 5th *March*. *James Arding*. Situation of freehold, on the poll, "*Gray's Inn-lane*;" assessed in *Chad's-row*; *Chad's row* is a continuation of *Gray's Inn-lane*, and is sometimes called by the same name. The vote was allowed. *Middl.* 2 *Peckw.* 71.

101. — *March*. *Thomas Parker*. Situation of freehold, "*Whitechapel-road*;" assessed in *Whitechapel High-street*; the road is a continuation of the street, but it is numbered separately and never called by the same name. The committee declared the vote to be bad. *Middl.* 2 *Peckw.* 71.

102. 20th *March*. *Lawrence Colson*. Situation of freehold, "*Chandos-street*;" assessed in *Ship-yard*. There are only three houses in this yard, which goes out of *Chandos-street*. They are seldom called by the name of *Ship-yard*, but generally *Chandos-street*. The vote was allowed. *Middl.* 2 *Peckw.* 71.

103. 18th *April*. *John Roberts*. Situation of freehold, "*Harrow*;" assessed in *Pinner*, which is a hamlet of the parish of *Harrow*, but maintains its own poor separately: has a separate ballot for the militia, separate churchwardens, and a *separate land tax assessment*. The committee declared the vote to be bad. *Middl. 2 Peckw. 71.*

*Not duly assessed.*

104. In the case of *John Dell*, *no assessment*, either of the voter or tenant, was found. It was proposed to prove the freehold assessed by putting in the receipts given to the tenant of the land, who had actually paid the rate; but the committee decided this was not sufficient evidence to establish the assessment. *Middl. 2 Peckw. 73.*

105. Rev. *W. Aubrey Phelps*. In the assessment "the vicar of *Stamwell*," was named proprietor of the freehold; which was considered as a sufficient assessment in the name of the proprietor; the voter being proved to be the vicar. *Middl. 2 Peckw. 74.*

106. Owner's name in the tenant's column, and stated "Ld" (for "landlord") was a good vote. *Middl. 2 Peckw. 75.*

107. In the assessment, no proprietor's name, but the voter's name was in the column of *occupiers*. The premises were, in fact,

occupied by another; but the assessor had named the voter only, because he had always received the land tax from him. The vote bad. *Middl. 2 Peckw. 75.*

108. The committee determined "that the name of *the wife* should not be considered as sufficient on the assessment, either as landlord or tenant; but the *name of the husband shall be required*, in any case where the parties have been married more than twelve months, previous to the election." *Middl. 2 Peckw. 76.*

109. If the *tenant* be changed between the making the assessment and the election; or if the tenant be changed between the times of *making and allowing the assessment*, the vote is good. *Middl. 2 Peckw. 75.*

#### *Form of assessment.*

110. Rate 1801, collected on an assessment made in 1800. *Middl. 2 Peckw. 80.*

111. Where the name of the voter was inserted in the assessment by the collector, after the commissioners had signed it, the vote was deemed bad. *Middl. 2 Peckw. 80.*

112. A "fee-farm" rent, (which words the committee thought were used by mistake, in the 20 *Geo. 3. c. 17. s. 2*, but held themselves bound by them,) must be registered n

the land from which it issues be not assessed. *Middl. 2 Peckw. 85.*

### *Land Tax redeemed.*

113. Persons claiming to vote for members of parliament for lands, where the land tax is redeemed, shall vote without being compelled to shew the assessment, "upon proving, to the satisfaction of the returning officer, on *oath or otherwise*, that such land tax hath not at *any time previously to such election* been redeemed or purchased." 43 *Geo. 3. c. 116. s. 200.* *Disney's El. Stat. 189.*

114. In the case of *John Atkinson*, 28th *May*, where the contract of redemption was for premises "belonging to *John Atkinson*, assessed in the name of *Richard Atkinson*," and it was contended that a title from *Richard Atkinson* to the voter should be proved, it was argued that since the stat. 42 *Geo. 3. c. 116. s. 200.* there was no necessity of showing any connection with the voter on the poll, and the proprietor named in the assessment, that statute having entirely dispensed with the proof of assessment. The committee held the vote to be good. *Middl. 2 Peckw. 87.*

115. By stat. 42 *Geo. 3. c. 116. s. 165*, every

copy of the register of any contract made in pursuance of this act, and registered according to the directions thereof, with the proper officer appointed for that purpose, which shall be signed by him, shall be allowed in all courts and places, and before all persons, to be good and sufficient evidence of such contract. *Middl. 2 Pechs. 87. n. (q.)*

116. *Thomas Care* came to his freehold by devise within a year before the election: he was not assessed, but his mother was; and his vote held good. *Hew. Counties, 142.*

### *Splitting Votes.*

117. All conveyances of any messuages, lands, tenements, or hereditaments, in any county, city, borough, town corporate, port or place, in order to multiply voices, or to split and divide the interest in any houses or lands, among several persons, to enable them to vote at elections of members to serve in parliament, are hereby declared to be void, and of none effect; and that no more than one single voice shall be admitted to one and the same house or tenement. *7 and 8 W. 3. c. 25. s. 7. Disney's El. Stat. 14.*

118. In the case of *Weymouth* and *Melcombe Regis*, 3d June 1714, the votes of persons who had enjoyed their estates for three years, were set aside; because the estates

had been at first acquired for the sole purpose of a vote. 1 *Peckw.* 311.

119. No time is fixed within which, previous to the election, the conveyance is invalidated; but the committee, laying all the circumstances together, must say, whether, if made several years, or only one day before the election, it was the intention of the party to multiply voices. No length of time protects a transaction from the imputation; nor is it proved merely from its being recent. *Heyw. Count.* 100.

120. In construing this act the safest time seems to be, that every transaction by which a larger estate shall be divided into smaller ones, shall be considered singly by itself, and under its own circumstances; and that it shall be presumed to have been a fair and *bonâ fide* one, until the contrary is proved. *Heyw. Count.* 103.

121. No person shall vote in respect or right of any freehold estate, which was made or granted to him fraudulently, on purpose to qualify him to give his vote. 18 *Geo. 2, c. 18. s. 5.* *Disney's El. Stat.* 81.

122. These provisions are only declaratory of the common law, by which, wherever a person made a fraudulent grant of land to create a vote, the grantee might either take possession of the land, or recover the pro-



bits from the grantor. *Heyw. Count.* 107, 108.

123. By an act two years after, (viz. 12 *Ann. stat.* 1. c. 5. *Disney's El. Stat.* 12.) explanatory of the former, it was declared that the former act should not extend to persons voting in respect of rents, tithes, or other incorporeal inheritances, or of any messuages or lands in extraparochial places, or of any chambers, or inns of court or chancery, or of places or offices, not usually charged to the public taxes. *Simon*, 61.

124. All estates and conveyances whatsoever made to any person or persons, in any fraudulent or collusive manner, on purpose to qualify him or them to give his or their vote or votes, at such elections of knights of the shire, (subject nevertheless to conditions or agreements to defeat or determine such estate, or to reconvey the same) shall be deemed and taken against those persons who executed the same, as free and absolute, and be holden and enjoyed by all and every such person or persons, to whom such conveyance shall be made, as aforesaid, fully and absolutely acquitted, exonerated, and discharged of and from all manner of trusts, conditions, clauses of re-entry, powers of revocation, provisos of redemption, or other disabilities whatsoever, between or with

the said parties or any other person or persons in trust for them. 10 *Ann. c. 23. s. 1. Disney's El. Stat. 57.*

### *Producing Title Deeds.*

125. A notice was then proved to have been served on *Morse*, to produce his lease; and a copy of the lease, signed and allowed to be such by him, was offered in evidence: this also was objected to; but the committee determined, "that *Morse* not having produced the deed after notice, his declaration," (i. e. his acknowledgment of the copy) "shall be received in evidence." 1 *Peckw. 210.*

126. *Joseph Drowe*, a freeholder, voted for the petitioners, and was rejected by the returning officer, because he had not his title deeds ready to produce. The committee received the evidence, and added the vote to the poll, for the petitioners. N. B. His father had withheld the deeds from the voter, and had not restored them to him till after the election. 1 *Peckw. 574-5.*

### *Annuities.*

127. No person to vote in respect of *any annuity or rent-charge*, issuing out of freehold lands or *tenements*, (granted before 1st *June 1763*;) unless a certificate upon oath shall have been entered with the clerk of the peace,

twelve calendar months *before the first day of the election.* The form of the certificate set out, 3 *Geo. 3. c. 24. s. 1.*

128. If the annuity or rent-charge shall come to the voter, “by descent, marriage, marriage settlement, or devise, or presentation to a benefice, or promotion to an office within twelve calendar months next before such election respectively,” the certificate (of which a form is given) must be entered with the clerk of the peace before the first day of such election, 3 *Geo. 3. c. 24. s. 2.* *Disney’s El. Stat.* 105.

129. If the *annuity or rent-charge* be granted after the 1st *June* 1763, “a memorial of the grant of such annuity or rent-charge,” must be registered with the clerk of the peace for the county where the lands lie, “twelve calendar months at least before the first day of such election;” which memorial shall be wrote on parchment, and directed to such clerk of the peace, town clerk, or other public officer, and shall be under the hand and seal of the grantor or grantors, and attested by two witnesses, one whereof to be one of the witnesses to the execution of such grant; which witness shall, upon oath, before such clerk of the peace, town clerk, or other officer as aforesaid or their deputies, prove the sealing and delivering of such grant, and the sign-

ing and sealing of such memorial; and which memorial shall contain the day and year of the date, and the name, additions and abodes of the parties and witnesses, and all the lands and tenements out of which the annuity or rent-charge issue, and the parish, township or place, or the parishes, townships and places, where such lands and tenements lie; and that every such grant, of which such memorial is to be registered, shall at the time of entering such memorial, be produced to such clerk of the peace, town clerk or other officer as aforesaid, or their deputies, who shall thereon endorse a certificate, in which shall be mentioned the day and year on which such memorial shall be so entered. 3 Geo. 3. c. 24. s. 3. *Disney's El. Stat.* 106.

130. If the voter votes "by reason of an assignment of any annuity or rent-charge or any part thereof," made *before* 1st June 1763, a *certificate* of such assignment, upon oath, similar to that for original grants, must have been entered with the clerk of the peace, twelve calendar months *at least* before the first day of such election. If the assignment be made *AFTER* the 1st June 1763, a MEMORIAL of the assignment, and a memorial of the grant, attested and registered as in original grants, 3 Geo. 3. c. 24. s. 4. *Disney's El. Stat.* 107.

131. Books are to be kept by the proper officers for entering such certificates and me-

memorials, fees for entry, for search, and for copies. The officer may administer an oath in cases aforesaid. Copies attested by the proper officer, deemed legal evidence. *3 Geo. 3. c. 24. s. 5. Disney's El. Stat. 108.*

132. Memorials of grants or assignments made and executed above forty miles from the office of the clerk of the peace, to be registered, upon producing an affidavit made by one of the witnesses, (who must therein swear he saw the same executed,) before one of the judges at *Westminster*, or before a master in Chancery, *ordinary* or *extraordinary*. *3 Geo. 3. c. 24. s. 6. Disney's El. Stat. 108.*

133. Officer or his deputy to attend, upon reasonable notice and satisfaction, with the books of entries at such election. *3 Geo. 3. c. 24. s. 7. Disney's El. Stat. 109.*

134. Penalty of 10*l.* on the officer being guilty of neglect or fraud. *3 Geo. 3. c. 24. s. 8. Disney's El. Stat. 109.*

135. By stat. *20 Geo. 3.* it is enacted, that that act, with regard to such rating and assessing as aforesaid, shall not extend or be construed to extend to *annuities* or *fee farm rents* (duly registered) issuing out of any messuages, lands, or tenements, rated or assessed as aforesaid. *20 Geo. 3. c. 17. s. 2. Disney's El. Stat. 118.*

136. Resolved *non con.* that a resolution of

fee-farm rent need not be registered under the act for registering annuities. By the *Gloucestershire* committee. *Heyw. Counties*, 153.

137. By the *Gloucestershire* committee, (1777,) resolved, *nem. con.*, that the annuity for which *Samuel Harrington* voted, and which devolved upon him in 1762 by the will of *John Dee*, does not require to be registered. *Heyw. Counties*, 153.

138. But the *Bedford* committee (1784), in the case of *Edward Pincard*, who voted for an annuity which was not registered, charged by will on the testator's estates, which were assessed in the names of the owners, rejected the vote. *Heyw. Count.* 154.

139. As the law now stands, either the freehold itself for which the vote is given, must be assessed, or it must be registered in the shape of an annuity or rent-charge, land out of which it issues being likewise assessed. *2 Peckw.* 85.

140. Mr. *Luders* has observed, that the regulations of this act (*3 Geo. 3. c. 24.*) do not seem to have been intended for annuities annexed to offices; therefore an annuity in lieu of tythes need not be registered. *Heyw. Counties*, 155.

141. A schoolmaster's salary issuing out of lands need not be registered. *2 Lud.* 432, 491.

*Personal Disqualification.*

142. The common law considers an alien as incapacitated to vote, not merely because he cannot hold the requisite qualification in land, but because he labours under a personal incapacity: in consequence, an alien cannot be elected or appointed to any public office whatever: nor can he vote at any election of members to serve in parliament, whether the right of election is vested in the owners of land, in persons locally resident within a certain district, or in any other classes of voters. *Heyc. Counties*, 157.

143. An alien born who has obtained, *ex donatione regis*, letters patent to make him a *British* subject is termed a denizen. He may take lands by devise or purchase, but not by inheritance: and may vote (when qualified in other respects) at the election of members to serve in parliament. *Heyc. Counties*, 158.

144. 28th May. *Anthony Barber*. Objection, "alien." The chief clerk of the Alien Office produced the returns made by the aliens at the different police offices, under the alien act. This was admitted to be sufficient evidence of his being at that time a foreigner, and no proof being given that he had since been naturalized, his vote was declared bad. *9 Pictic* 118.

145. *Naturalization* cannot be performed but by act of parliament ; for by this an alien is put in exactly the same state as if he had been born in the king's allegiance. 1 *Black. Com.* 374.

146. Every foreign seaman is by the 15 *Geo. 2. c. 3.* naturalized *ipso facto*, who in time of war serves two years on board an *English* ship, by virtue of the king's proclamation ; and all foreign protestants and Jews residing seven years in any of the American colonies, without being absent two months at a time ; and all foreign protestants serving two years in a military capacity there ; or being three years employed in the whale fishery without afterwards absenting themselves from the king's dominions for more than one year, (except those disabled by the 4 *Geo. 2. c. 21.*) shall be, upon taking the oaths of allegiance and abjuration, or in some cases, making an affirmation to the same effect, naturalized. *Heyw. Counties.* 159.

147. If the voter cannot understand the oaths in English, it seems they should be administered in a language which he does understand. *Heyw. Counties,* 300.

N.B. This is the constant practice in courts of justice. *Id.*

148. Women cannot vote at elections. *Heyw. Counties,* 160.



149. No person under the age of one and twenty years shall be admitted to give his voice for election of any member to serve in parliament. 7 & 8 W. 3. c. 25. s. 8. *Disney's El. Stat.* 15.

150. That the voter is "twenty-one years of age as he believes," is part of the freeholder's oath. 18 Geo. 2. c. 18. s. 1. *Disney's El. Stat.* 77.

151. An idiot is one who is a fool or madman from his nativity, and never has any lucid intervals. And though no inquisition should issue, the candidates or sheriff's always have the power of excluding him, by insisting upon his complying with the legal requisites, and tendering him the oaths when he comes to vote. *Hogye Counties*, &c.

152. A lunatic is a person who is destitute of good and sound memory and understanding. The best protection perhaps, of the sheriff against mistakes in the admission or rejection of the voter of lunatics as well as idiots, is to be strict with persons suspected to be such, as to taking the oaths, declaring for whom he votes, &c. *Hogye Counties*, &c. 117.

153. To a lunatic for the loss of such memory, he may afterwards make a covenant, &c. *Co. Dig. Elect.* 119.

154. The fact of idocy or the capability of a lunatic, must always depend upon cir-

peculiar circumstances of the case, in which the returning officer must use his best discretion. If a lunatic be in a sound mind, at the time, there seems no objection to his voting. *Ed.*

155. Alms, received within a year before the election, is held a disqualification at common law. And the state of the voter previous to that period, is immaterial, and shall not be enquired into. *Simeon*, 101.

156. Mr. Serjeant *Heywood* expresses a doubt, whether receiving *parish relief* be a disqualification, and mentions it as a question still undermined. *Heyw. Counties*, 167.

157. Alms, is generally defined to be parish relief; and is a disqualification if received within the year. *Simeon*, 104.

158. In the *Corcentry* case the receipt of *sacrament-money*, and *bread-money* within the year were held *not* to disqualify, as those benefits did not come within the notion of alms. *Simeon*, 104.

159. That *Robert Strange* having within twelve months before the election received parish relief, was thereby disqualified from voting. 2 *Luders*, 567.

160. *Jeremiah Hearsom*. He was attended while sick, by the parish apothecary, by the order of the parish officers, upon the appli-

cation of the voter. His vote was held bad. *1<sup>o</sup> Peckw. 508.*

161. *April 14th. Philip Harrison.* In the assessment the entry was “*Philip Harrison, poor.*” The voter was a day-labourer, and had for several years been the owner of two small freehold cottages; the land tax had never been collected from him. His vote was allowed. *2<sup>o</sup> Peckw. 117.*

162. It is now determined, that alms do not disqualify a *freeholder* otherwise qualified: though the *Cricklade* committee had held the contrary in a similar case. *Simon, 102.*

163. It should seem, that where the *wife* of the voter has received relief from the parish for the use of her husband, or his family, it will affect him exactly as if he had received it with his own hand; but doubted if they live separate. *Heyw. Counties, 173.*

164. In the *Cricklade* committee (1785), it was resolved, “that those persons who submitted themselves, or their families to be inoculated, in the year 1783, by the invitation of the parishes of *Cricklade*, and received relief in consequence of such inoculation, were not thereby disqualified from voting at the last election.” *Heyw. Count. 170.*

165. Any parish relief which shall be given

to the family of any militia-man, during the time of actual service, shall not deprive such militia-man from voting for the election of any member to serve in parliament. 18 *Geo. 3. c. 59. s. 25.*

166. "Charity," in the laws of parliament has been defined to mean any sum of money or other emolument arising from certain *specific funds*, appropriated to the assistance of persons in mean or poor circumstances. *Heyw. Counties, 175.*

167. Charity donations by will, annually distributed, do not disqualify. 1 *Peckw. 510.*

168. It was agreed on both sides, that neither alms nor charity disqualify an elector in *Taunton*, unless they have been received within a year before the election. 1 *Doug. 370.*

169. *Isaac Hazel.* He had met with an accident, and upon the application of a principal inhabitant, was attended by the apothecary for the poor of the parish, gratis. His vote was held good. 1 *Peckw. 508.*

170. It has been resolved, "that the sharing in a *charitable gift* appointed to be distributed at *Christmas*, is a taking of "alms," and disqualifies. *Heyw. Count. 176.*

171. The petitioner (1708) proceeded to

disqualify votes, on account of their receiving Sir T. W.'s gift, (which is a gift of forty shillings *annually* to each of the objects of the charity;) and the question being put in the house that they were disabled by receiving it, it passed in the negative. *Heyw. Count.* 177.

172. A similar determination, where the gift was similar, was decided in the same way in 1711, not to disqualify. *Heyw. Count.* 178.

173. Some line must be drawn, and that line, by the established custom of parliament, seems to be one year before the election; unless in particular cases, where, either by special usage, or determination of the house, or an act of parliament, some other rule is laid down. *Heyw. Count.* 182.

174. But where the benefaction rose from a trust called *Mayer's* charity, which was a distribution of money out of the surplus profits of *land*, and was generally given to people rated to the poor, it was held not to disqualify those who had received it within the year. *Simons.* 104.

175. Vert *in lands* had been left by one *Hawes* for the use of the poor of the parishes of St. Mary and St. Paul Bedford: of the yearly profits of this land two thirds were distributed yearly *in bread* to the poor of St.

*P.* and one third to *St. M.*: they were not disqualified. *N. B.* It was generally given to the *wives* and children. *S. C.* 116. 2 *Doug.* 413 and 122.

176. But where there is a charitable foundation, in which the members have a permanent interest, as in the case of the *Chelsea* and *Greenwich* pensioners, this does not disable them from voting, *for it is their estate.* *Simon,* 105. 1 *Doug.* 373.

177. A motion (1746) was made, and the question put in general terms, “that the receiving of sacrament money does disqualify persons to vote in elections of members to serve in parliament;” and it passed in the negative, *nem. con.* *Heyw. Count.* 186.

178. Where the charity was 14l. per ann. issuing out of land, to purchase shirts, &c. for poor men; and another person had devised fifty shillings to purchase one hundred loaves of bread, a loaf to be given with each shirt, &c. the receivers were not disqualified. *Heyw. Counties,* 139.

179. The result of these cases seems to be, that where the voter had a permanent interest in the charity land; or where the profits were very inconsiderable, and given to wife and children; or though given to the voter himself, *if the usage was for the receiver to*

vote, that in these cases he is not disqualified. *Simon*, 105, 106.

180. No commissioner, collector, supervisor, gauger, or other officer or person whatsoever, concerned or employed in the charging, collecting, levying or managing the duties of *excise* or any branch or part thereof;

181. Nor any commissioner, collector, comptroller, searcher or other officer whatsoever, concerned or employed in the charging, collecting, levying or managing the *customs*, or any branch or part thereof;

182. Nor any commissioner, officer, or other person concerned or employed in collecting, receiving, or managing any of the duties on *stamped vellum*, parchment and paper, nor any person appointed by the commissioners for distributing of *stamps*;

183. Nor any commissioner, officer, or other person employed in collecting, levying, or managing, any of the duties on *salt*;

184. Nor any surveyor, collector, comptroller, inspector, officer, or other person employed in collecting, managing or receiving the duties on *windows or houses*;

185. Nor any *post-master*, post-master-general, or his or their deputy or deputies, or any person employed by or under him or them, in receiving, collecting, or managing the

revenue of the *post office*, or any part thereof;

186. Nor any *captain*, master, or mate of any ship, *packet*, or other vessel employed by or under the post-master or post-masters-general, in conveying the mail to and from foreign ports. 22 *Geo. 3. c. 41. s. 22.* *Disney's Ill. Stat.* 141.

187. *Thos. Barringer* was objected to as being a *collector of the duties on houses and windows*, appointed (by commissioners of land tax) by virtue of the 20 *Geo. 2. c. 3. s. 6.* The committee resolved that he was not disqualified. *Heyw. Counties*, 201.

188. Same objection was made, and had a similar determination in the *Buckingham* case. *Heyw. Count.* 202:

189. Sub-distributor of stamps being appointed by distributor, and not by government, may vote. *Simcon*, 57.

Same point. 1 *Frazer*, 164.

190. So one who is occasionally appointed by the collector of excise to collect, at wages paid by the collector, while he was sick or absent, the wages to be afterwards allowed by the board at their discretion, was allowed to vote. 1 *Frazer*, 165.

191. The Rev. J. H. was objected to as the husband of the post-mistress of *Nor-market*. She had been appointed in 1773, married the voter 1781, and still held the



office: his vote was rejected. *Heyw. Count.* 203.

192. One kept the house where the post office was, and did the house business, and took the profit; but the landlord of the house (who was a brewer) was the *real* post-master, and responsible to government; the *real* post-master held to have no vote. *Simeon*, 58.

193. *Sam. Morris* was objected to as being a *mail-guard*. The voter was paid ten shillings and sixpence a week, by the post-master at *Oxford*. The committee resolved that that office does not disqualify the voter. 2 *Fras.* 454.

194. *J. W.* was a *sub-deputy* for delivering letters in a parish, not a post-town. These sub-deputies are appointed, not by the post-master general, but with his approbation. This vote was good. *Heyw. Counties*, 203.

195. Resolved, “that it is a high infringement of the liberties and privileges of the commons of *Great Britain*, for any lord of parliament, or any lord lieutenant of any county, to concern themselves in the elections of members to serve for the commons in parliament.” This resolution is passed at the beginning of every session. 1 *Doug.* 161.

196. I know of no objection to the *she-*

*riff's* giving his vote as a freeholder, at a county election. He is in the situation of every other returning officer; and it is a very common thing for returning officers to vote at the elections of citizens and burgesses. *Heyw. Counties*, 205.

197. A *candidate*, who is in other respects qualified to vote at the election, is not deprived of the exercise of his franchise. He may vote for any other candidate; but, what is a little extraordinary, he may vote *for himself*. At the last election (previous to *June 1790*,) for the county of *Middlesex*, Mr. *Byng* and Mr. *Wilkes* each voted for himself; and Mr. *Mainwaring* voted for Mr. *Wilkes*. *Heyw. Count.* 206, 207.

198. *Quakers* may vote, making the affirmations required by law; and it is the constant practice to admit them. *Ed.*

199. A *papist* may vote if he took all the oaths tendered, though the oath of abjuration was not tendered or taken at the election. *Simeon*, 55.

200. It has never been determined, whether a *popish recusant convict* is, as such, disabled from voting at the election of members of parliament. *Heyw. Count.* 216.

201. Since their return (after being banished by *Edw. I.*) *Jews* have been possessed of real estates, without molestation; and

notwithstanding the doubts thrown out in both houses of parliament 1753, may, I conceive, vote at county elections, upon taking the oaths, according to the ceremonies of their own religion, as they are always permitted to do, when sworn in the courts of justice. *Heyw. Count.* 218.

202. After *outlawry* his estate is no longer vested in him (the outlaw;) and it should seem that he loses the franchise of voting annexed to it: besides, he is no longer *liber et legalis homo*; and therefore it may be said, is excluded on account of the personal incapacity under which he labours. *Heyw. Counties* 219.

203. On the subject of *outlawry*, the same reasoning will apply to the elector as the elected; and for this question as it affects candidates, see *ante Chap. II. s. iii. pl. 39. &c.*

204. *Excommunication* is divided into two sorts, the greater and the lesser. The *lesser* is, where a man is deprived of the participation of the sacraments only; the *greater*, *non solum a sacramentorum, verum etiam, fidelium communione excludit, et ab omni actu legitimo separat et dividit.* Either of them, in general, disables a person from suing in any temporal court of justice, *for excommunicatio interdicitur omnis actus legitimus ita quod agere non potest.* In this situation, when a person cannot do one legal act, it

may be argued, that he cannot vote at the election of members of parliament. This point has never been determined in the House of Commons. *Heyw. Counties*, 220.

205. Persons *attainted* have no right to vote, for they lose all their civil rights. *Simeon*, 55.

206. *Charles Jeffries* was objected to, as being a felon convict. The minutes of the quarter sessions, at which he had been indicted and tried, being given in evidence, it appeared from thence that he had been indicted for stealing some horse furniture, the value of which, as it is observed in the minutes of the committee, was not stated in the minutes of the sessions, that he was found guilty, and sentenced to be confined to hard labour for fourteen days. His vote was held bad. 1 *Peckw.* 508-9.

207. A *felon* convict is incapable of voting. And the session book was held evidence of his being a felon convict. *Sed qu.* as to the latter point. *Simeon*, 55.

208. This point of evidence has been decided very differently in the courts of law; where even the *party himself* cannot admit his conviction. Lord *Ellenborough*, "Whether  
" or not the witness were convicted of felo-  
" ny would appear *by the record*: and it  
" cannot seriously be argued that a record

“ can be proved by the admission of *any*  
“ witness. He (i. e. the convict in this  
“ case) may have mistaken what passed in  
“ court, and may have been ordered on his  
“ knees for a misdemeanor. This can only  
“ be known by the record, and there is no  
“ authority for admitting parol evidence of  
“ it.” 8 *E.T.R.* 79.

209. No person convicted of wilful and corrupt *perjury*, or subornation of perjury, shall after such conviction be capable of voting in any election of any member or members to serve in parliament. 2 *Geo. 2. c. 24. s. 6. Disney's El. Stat.* 58.

210. Any person guilty of *bribery*, “ after judgment obtained against him in any such  
“ action of debt,” (i. e. for the penalty of 500*l.*) “ bill, plaint, or information or summary action or prosecution, or being *otherwise lawfully convicted thereof*, shall for ever be disabled to vote in any election of any member or members to parliament.” 2 *Geo. 2. c. 24. s. 7. Disney's El. Stat.* 59.

211. Offenders in twelve months after the election, discovering others are indemnified: 2 *Geo. 2. c. 24. s. 8. Disney's El. Stat.* 59.

212. No person liable to any penalty by the said act ( 2 *Geo. 2. c. 24.* ) unless personally served with process, within two years of

the fact. 9 *Geo. 2. c. 38. s. 1. Disney's El. Stat. 255.*

213. Mr. *Douglas* remarks that the same incapacities ensue upon a conviction, on a prosecution for bribery, by way of information at common law, as when the proceed is by an action under the statute; and founds this opinion on the words, "or being any otherwise lawfully convicted thereof" in the act. 4 *Douglas*, 294.

214. The *running of unaccustomed goods* does not disable a freeholder from giving his vote; but a committee of the House of Commons thought fit to recommend its being added to the list of disabilities. This resolution was never carried into effect. *Heyw. Count. 226.*

215. A voter must not poll twice at any election. See freeholder's oath, 18 *Geo. 2. c. 1. Disney's El. Stat. 77.*

216. A voter must declare himself as to *both* candidates at the time he polls: he cannot poll for one, go away, and poll again for the other. *Heyw. Count. 283.*

217. A voter who has been admitted by the sheriff or poll clerk to vote at a wrong booth, does *not* lose his vote. *Peckw. 59.*

## CHAPTER III.

*Proceedings after a County Election.*

## Sect. i.—Making the Return.

1. “AND the name of those *knights*, citizens and burgesses so to be elected, (whether they be present or absent,) you (the sheriff) cause to be inserted in *certain indentures* to be thereupon made, between you and those who shall be present at such election.”  
The writ of summons. *Heyw. Count.* 2.

2. And further, “and that the election in your full county, so to be made distinctly and openly, *under your seal*, and the seals of those who shall be present at such election, you do certify to us in our chancery, at the day and place aforesaid, without delay, remitting to us one part of the aforesaid *indentures*, annexed to these presents, together with this writ.” Writ of summons. *Heyw. Count.* 3.

3. And after that they be chosen, the names of the persons so chosen, (be they present or absent,) shall be written in an *indenture under the seals of all them that did choose them*,

and tacked to the same writ of the parliament, which *indenture* so sealed and tacked shall be holden for the sheriff's return to the said writ touching the knights of shires. 7 Hen. 4. c. 15. *Disney's El. Stat.* 195.

4. The return must be made by the sheriff or deputy, "with all convenient expedition, not exceeding fourteen days after any election, made by virtue of any new writ." 10 & 11 W. 3. c. 7. s. 1. *Disney's El. Stat.* 17.

5. At the close of the poll (which must not exceed fifteen days; see *ante*, Chap. II. s. iv. *pl.* 13.) the sheriff must declare the members, and "shall *forthwith* make a return," unless a scrutiny is demanded. 25 Geo. 3. c. 84. s. 1. *Disney's El. Stat.* 150.

6. If he grant a scrutiny the return must be made on a vacancy in thirty days: at a general election, on or before the return day of the writ: see *ante*, Chap. II. s. iv. *pl.* 51.

7. Every sheriff who shall *not make a return*, according to the true intent and meaning of this act, shall forfeit 500l. 10 & 11 W. 3. c. 7. s. 3. *Disney's El. Stat.* 18.

8. If any sheriff shall wilfully delay, neglect, or refuse duly to return any person who ought to be returned; to forfeit double damages and costs. 25 Geo. 3. c. 84. s. 15. *Disney's El. Stat.* 159.

9. There are various instances in the jour-



nals where the house has *censured*, and even committed the returning officer to the custody of the serjeant at arms, without hearing him, for *not making* a return of the writ, and sometimes *for not making a return* generally; so where there has been any *delay* in the return of the writ, the messenger of the great seal, the mayor and sheriff have been ordered to attend, and the persons with whom the fault has lain, have been *censured* and committed. *Simcon*, 169.

10. If a warrant, precept, or *return*, for burgesses to the parliament, have sufficient substance, it shall not be adjudged void for want of form. *Glanville*, 37.

11. It was answered, and resolved, that the form of the indentures, made in the country by ignorant persons, or transcribed, per adventure by some borrowed precedent of another borough, where the election is different, are not conclusive to bind the parliament by any inference to be made out of the same. *Glanville*, 35.

12. If the return of the borough to the sheriff, or of the sheriff over to the court, have substance, it shall not be impeached for any want of form, or surplusage in the matter. *Glanville*, 137.

*Making up the Poll-books.*

13. The sheriff shall within twenty days next after such election, faithfully deliver over upon oath (which two justices may administer) to the clerk of the peace, *all the poll-books*, without embezzlement or alterations. If more than one clerk of the peace, then the original books to one, and attested copies to the rest. 10 *Ann. c. 23. s. 5. Disney's El. Stat.* 40.

14. Five polls were taken and delivered to the sheriff. He carried only that which was taken *by his clerk*, as being the original poll, and the others only checks; and insisted that the act in requiring all the poll-books to be lodged, meant only in the case where the poll is going on at different booths, and all the books make one poll; but the court held, that all the books ought to have been carried in; and granted an information against the sheriff for not doing it.

N. B. "Upon reference to Mr. Attorney and me, we reported for a *nolle prosequi*, "it not being a wilful if *any* mistake." 2 *Strange*, 1048.

15. According to this decision, if the clerk of the peace is to keep the *checque*-books, he may, if so disposed, alter *them*; and then where is the security of a *checque* to the candidate? *Ed.*

16. It appeared that the under-sheriff had kept the poll-books in his possession ever since the election, much longer than the legal time, not being aware of the stat. 10 *Ann. c. 23.* ; which requires that they shall be delivered over to the clerk of the peace within twenty days after the election. The committee ordered, that the under-sheriff, or the person in actual possession of the poll-books do now produce the same. 1 *Peckw.* 208, 209.

## CHAPTER IV.

*Proceeding previous to an Election for a City  
or Town being a County.*

## Sect. i.—Issuing of the Writ.

1. IN cases of vacancy during a sitting or prorogation, or recess, the same proceedings are had as in counties. See *Chap. I. s. i.*

2. The writ is *issued* and carried out in the same manner as in counties. See *Chap. I. s. i.*

3. The writ is *directed* to (*inter alia*) the returning officer or officers of cities and boroughs being counties of themselves. *Heyw. Boroughs, 87.*

4. The writs must be *delivered* to the proper officer to whom execution thereof doth belong and appertain, and to no other person whatsoever. 7 & 8 *W. 3. c. 25. s. 1. Disney's El. Stat. 10.*

5. As to the *delivery*, further. See *Countries, Chap. I. s. i.*

6. The returning officer shall upon the back thereof indorse the day he received the

same. 7 and 8 W. 3. c. 25. s. 1. *Disney's El. Stat.* 10.

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Sect. ii.—Notice of Election.

1. The sheriff of every city or town, being a county by itself, having a right to elect *by writ without a precept*, shall *forthwith* on the receipt of the writ, cause notice to be given of the time and place of election: and proceed to election in eight days of receipt of the writ; and give three days notice at least, *exclusive* of the day of the receipt of the writ, and of the day of election. 19 Geo. 2. c. 28. s. 7. *Disney's El. Stat.* 95.

2. It must be held in the most public and usual place where it has been held for forty years. The title of the act is “For preventing irregular proceedings of *sheriffs and other officers.*” 7 and 8 W. 3. c. 25. s. 3. *Disney's El. Stat.* 11, 12.

3. Such cities and boroughs were placed by the common law on the same footing as counties, where they held county courts; regularly their elections were subject to the same regulations. *Heyw. Boroughs*, 133.

4. Further regulations, as to *where* and at what *time the notice* is to be given, are contained in 7 and 8 W. 3. c. 25, and 33 Geo. 3.

c. 64., which apply to cities and towns being counties. (*Heyw. Boroughs*, 160.) See *Counties*, Chap. I. s. ii.

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### Sect. iii.—Erecting Booths.

1. THE statute 18 *Geo. 2. c. 18.*, extends only to *elections of knights of the shire*; by the title to the act. *Disney's El. Stat.* 76.

2. The sheriff must take the poll in some open or public place or places. 7 & 8 *W. 3. c. 25. s. 1.* *Disney's El. Stat.* 12.

3. By the common law, the returning officer is not obliged to put himself to expence; nor is he required to erect scaffolds or booths, or appoint poll-clerks for the more convenient taking of the poll. *Heyw. Boroughs*, 164.

4. When candidates liable to pay, and other points, See *Counties*, Chap. I. s. iii.

## CHAPTER V.

*Proceedings at an Election for a City or Town  
being a County.*

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Sect. i.—Reading the Writ and Statute.

1. THE writ must be read, and the bribery act, here as well as in counties—for the words of the act are, “by every officer to whom the *execution of any writ or precept* belongs.” See *Counties, Chap. II. s. i.*

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Sect. ii.—Oaths to the Sheriff.

1. Every person being returning officer of any member to serve in parliament, is to take the oath prescribed by 2 *Geo. 2. c. 21.* therefore the proceedings here are the same as in counties. See *Counties, Chap. II. s. ii.*

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Sect. iii.—Candidates.

1. Who are and when nominated, same as in counties. See *Counties, Chap. II. s. iii.*

2. Every candidate must have an estate of the annual value of 600*l.* above reprises, for every knight of the shire, and the annual value of 300*l.* above reprises, for every citizen, burgess, or baron of the cinque port, by 9 *Ann. c. 5. s. 1.* See *Counties, Chap. II. s. iii. pl. 6.*

3. The candidates in cities and towns being counties, must take the oaths of qualification, required by 9 *Ann. c. 5.*; and for all other points, see *Counties, Chap. II. s. iii.*

4. Personal disqualifications are the same as in counties. See *Counties, Chap. II. s. iii. pl. 18.*

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#### Sect. iv.—Taking the Poll.

1. THE sheriff of every *city or town being a county*, must allow a checque-book, for every poll-book for each candidate, to be kept by their respective inspectors, at the place where the poll is taken. 19 *Geo. 2. c. 28. s. 6.* *Disney's El. Stat. 94.*

2. It seems that by the 6th section of 19 *Geo. 2. c. 28.*, a poll *in writing* is implied by the provision, “to allow a checque-book “for every poll-book, or each candidate.” *Simeon, 160.*

3. At every election for any city, borough or *other place*, every person whom the return-



ing officer shall retain to act as a clerk in taking the oath, shall be sworn. 25 *Geo. 3. c. 84. s. 7.* *Disney's El. Stat.* 154.

4. Commissioners to administer oaths, and erect booths for the purpose, &c. regulated by 34 *Geo. 3. c. 73.*, and 42 *Geo. 3. c. 62.*, extend to elections, “for any county, city, borough, or *other place.*” See *Counties, Chap. II. s. iv.*

5. See further regulations for casting the poll, 7 & 8 *W. 3. c. 25.*, and 25 *Geo. 3. c. 84.*; and alterations in the poll. *Counties, Chap. II. s. iv.*

6. As to scrutiny and proceedings therein, same as counties. See *Counties, Chap. II. s. iv. pl. 51.*

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#### Sect. v.—Voters—Freeholders.

1. With regard to the *tenure* by which the voters hold their respective estates, and the interest they have in them, they differ not from the electors for counties. *Heyw. Bor.* 390. See *Counties, Chap. II. s. v.*

2. It does not seem that any distinction was made between freeholders voting for cities and boroughs, and for *cities and boroughs being counties of themselves*, till 13 *Geo. 2. c. 20.*; whereby the first and second sections of the act of the 10 *Ann. c. 23.*, and the

whole of the 12 *Anne*, *Stat. 1. c. 5.* (both of which related only to electors for counties, were extended to the electors for certain cities and towns, being counties of themselves. *Heyw. Boroughs*, 391.

3. Mr. Serjeant *Heywood* observes very properly, that there is a variance between the preamble, and enacting part of the 13 *Geo. 2. c. 20.* ; and concludes his observations, that according to the profession in the *preamble*, the act was to relate only to those cities and boroughs, being counties, where the right of voting was already confined to freeholders of forty shillings a year ; but the *enacting* part applies the recited laws to all freeholders, and inflicts a penalty on every person not having an estate of that value, who should presume to vote. *Heyw. Boroughs*, 391-393.

4. No freeholder shall vote as freeholders, for members, for any *city or town, being a county*, unless such persons shall have a freehold estate in the city or town for which he votes of the clear yearly value of forty shillings, above charges. 19 *Geo. 2. c. 28. s. 4.* *Disney's El. Stat.* 93.

5. No public or parliamentary tax, church or parish rate, or duty, or other tax whatsoever, to be deemed a charge within this act. 19 *Geo. 2. c. 28. s. 5.* *Disney's El. Stat.* 94.

6. Person demanding to poll (if required by a candidate or voter) to take an oath or affirmation before he polls: the form in the act. 19 *Geo. 2. c. 28. s. 1. Disney's El. Stat. 88.*

7. The oath may be administered by the sheriff, under-sheriff, or sworn poll-clerk. 19 *Geo. 2. c. 28. s. 1. Disney's El. Stat. 89.*

### *Value.*

8. This act, 19 *Geo. 2. c. 28.* (except what relates to cheque-books, and notice of elections,) does not extend to any city or town, being a county, where the right of voting is in freeholders of less value than 40s. per annum. 19 *Geo. 2. c. 28. s. 13. Disney's El. Stat. 97.*

9. This act (19 *Geo. 2. c. 28.*) is confined by *sect. 13.* to persons having a right to vote for freeholds of the yearly value of forty shillings; but as the 13 *Geo. 2. c. 20.* had required all freeholders voting for cities and towns, being counties of themselves, to be so qualified, it may be argued, that the annual value of the voters is a material subject for investigation at the poll in such cities and towns. *Hew. Boroughs. 398.*

### *Possession.*

10. The voter must have been in the actual possession or receipt of the rents for

*twelve calendar months.* 19 *Geo. 2. c. 28. s. 4. Disney's El. Stat. 93.*

11. The most obvious construction is, that the computation (of the twelve months) is to be from the day when the voter takes the oath, and gives his vote. 3 *Doug. 235.*

12. If the same comes to the voter, “*within* the twelve months by descent, marriage, marriage settlement, devise, or promotion to any benefice in a church, or promotion to an office, he may vote.” 19 *Geo. 2. c. 28. s. 4. Disney's El. Stat. 94.*

#### *Assessment.*

13. No person to vote (as freeholder) in such city or town being a county, for lands which have not been charged or assessed towards some aid granted, or hereafter to be granted to his majesty, his heirs or successors, by a land-tax in *Great Britain, twelve calendar months* next before such election. Provided, that nothing herein contained, shall extend, or be construed to restrain any person from voting in any such election for cities and towns as are counties of themselves, as aforesaid, in respect or in right of any rents, or any messuages or seats belonging to any offices, in regard or by reason that the same have been usually charged or assess-

ed to the aid commonly called the land-tax. 19 *Geo. 2. c. 28. s. 3.* *Disney's El. Stat.* 92.

14. Three or more commissioners of land-tax, to sign and seal one duplicate of the copies of assessment delivered to them by the assessor, after all appeals determined, and the same shall deliver to the clerk of the peace. Copies to be given to persons requiring them paying for them. 19 *Geo. 2. c. 28. s. 3.* *Disney's El. Stat.* 92.

15. As to form of the assessment, and other things, See *Counties, Chap. II. s. v. pl. 53.*

16. It is observable, that the period of assessment in cities and towns, being counties, must be *twelve months*; in counties six only. See *Counties, Chap. II. s. v. pl. 55.*

17. Where the land-tax is redeemed, it is the same as in counties. See *Counties, Chap. II. s. v. pl. 113.*

### *Splitting Votes.*

18. The number of voters in cities and towns, counties of themselves, made some regulations necessary with respect to them. The statute of King *William*, to prevent the splitting of freeholds, expressly extended to them. The statute of 10th *Anne*, does not *literally* mention them, though it recites the statute of King *William*, and extends to all conveyances of freeholds. And therefore,

by the 13 *Geo.* 2., the provisions and penalties of the statute of 10 *Anne*, c. 23., against fraudulent conveyances, are expressly extended to freeholders, and freeholds in cities and towns, counties of themselves. *Simcon*, 68-69.

19. The same point. *Heyw. Boroughs*, 404.

### *Annuities.*

20. Fraudulent practices to carry elections for cities and towns, being counties of themselves, by means of grants of annuities and rent-charges issuing out of freehold lands and tenements, have been put upon exactly the same footing as if carried on to procure elections for counties, by the act of 3 *Geo.* 3. c. 24. *Heyw. Boroughs*, 411. Therefore see *Counties*, Chap. II. s. v. pl. 127.

21. Personal disqualifications are the same as counties; see *Counties*, Chap. II. s. v. pl. 142.

## CHAPTER VI.

*Proceedings after the Election.*

## Sect. i.—Making up the Return.

1. Must be indented, sealed, and executed, as in counties. See *Counties, Chap. III, s. i.*
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Sect. ii.—Making up and delivering the  
Poll-books.

1. As in counties. See *Counties, Chap. III, s. ii.*

## CHAPTER VII.

*Proceeding previous to an Election for a Borough or Town.*

Sect. i.—Issuing of the writ and precept.

1. The writ to the sheriff requires him  
 “ of every city of that county, two citizens,  
 “ and of every *borough* in the same county  
 “ two burgesses, of the most discreet, &c.  
 “ you cause to be elected.” *Heyw. Count.* 2.

2. The sheriff shall *forthwith* upon the receipt of the writ, make out the *precept* or precepts to each borough, town corporate, port or place within his jurisdiction, in a *new parliament*, or on *vacancy*. 7 § 8 *W.* 3. c. 25. s. 1. *Disney's El. Stat.* 10.

3. For a form of the precept, *Heyw. Boroughs*, 123.

*To whom delivered.*

4. The sheriff shall, by himself or proper agent, within *three days* of receipt of the writ, deliver the *precept* to the proper officer to whom the execution of the precept doth appertain, and to no other person. 7 § 8 *W.* 3. c. 25. s. 1. *Disney's El. Stat.* 10.

5. Resolved “ that — *Day*, late under-  
 “ sheriff of the county of *Somerset*, having  
 “ delivered the sheriff's precept for electing



“ a burgess to serve in parliament for the bo-  
 “ rough of *Minthead*, to *John Vicary*, and  
 “ *Joseph Sherry*, two of the burgesses of the  
 “ said borough, but not constables thereof,  
 “ is guilty of a breach of trust, and contempt  
 “ of the authority of this house. And he  
 “ was ordered into the custody of the ser-  
 “ jeant at arms.” 2 *Peckoe*, 330.

#### *How directed.*

6. The 7 and 8 *W. 3. c. 25*, as well as the  
 23 *Hen. 6th*, requires that the precept be  
*delivered* to the proper officer; but neither of  
 them require expressly that it should be *di-*  
*rected* to him, though in fact it constantly is;  
 and Lord *Mansfield*, (in 4 *Barr.* 2207.) states  
 the fact in these words. “ The precept  
 “ ought to be *directed* to the returning offi-  
 “ cer.” *Heyw. Boroughs*, 125, 126.

7. That no returning officer shall give or  
 take any fee for making out receipt, delivery,  
 return, execution of such writ or precept.  
 7 & 8 *W. 3. c. 25. s. 2. Disney's El. Stat.* 11.

#### *To be endorsed.*

8. Such officer (i. e. to whom the execu-  
 tion of the precept doth appertain.) shall in-  
 dorse the day he receives it on the back, in  
 the presence of the *person from whom* he  
 received it. 7 & 8 *W. 3. c. 25. s. 1. Disney's*  
*El. Stat.* 11.

9. The proper officer of the CINQUE PORTS shall be allowed *six days* from the receipt of the writ to the *delivery* of the precept. - 10 & 11 *W. 3. c. 7. s. 2.* *Disney's El. Stat.* 17, 18.

10. Numerous instances occur of petitions against elections and returns, complaining of persons not being the proper returning officers having by indirect means got possession of the precepts, and presided at elections. *Heyw. Boroughs*, 130.

11. Mr. *Serjeant Heywood*, on the 7 & 8 *W. 3. c. 25*, observes, that the statute is not confined to sheriffs of counties, but extends to all officers to whom writs of election were usually sent, and whose duty it was not to proceed to the elections themselves, but make out their precepts to others : thus it includes the sheriff of *Southampton*, a borough which is a county of itself ; because he issues his precept to the mayor and two bailiffs, who are the returning officers, and the proper officer of the cinque ports under whose precept also all elections are made. *Heyw. Boroughs*, 129.

12. Lord *Coke* notices what, indeed, necessarily follows from the statute of 23 *H. 6.* that if the city or borough elect before the receipt of the precept, such election is nothing ; and they must proceed to elections

again, after the delivery of the precept. *Simon*, 151.

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Sect. II.—Notice of Election.

1. Every such officer (i. e. having the execution of the precept) shall forthwith cause notice of the time and place of election to be given; and shall proceed to such election within *eight days* of the receipt of the *precept*, and give *four days* notice of such election. 7 & 8 W. 3. c. 25. s. 1. *Disney's El. Stat.* 11.

2. In the case of *Bridport* 1784, the notice was given on a *Sunday*, a petition was presented: and *dropped*, as Mr. *Luders* conjectures, because the parties thought they had no good ground to prosecute. *Heyw. Boroughs*, 156.

3. As to the *four days*, it has been usual to reckon one of those days inclusive, the other exclusive: thus, to give *notice on Monday for an election on Friday*; and this construction is supported, not only by general usage, but by a decision of the house. *Heyw. Boroughs*, 155.

4. Where both the days of giving notice and proceeding to election, have been reckoned *inclusively*, the notice has been deemed too

short and the election set aside. *Heyw. Boroughs*, 158.

5. All notices of time and *place of any election* of members, shall be given at the usual place or places, within the hours of eight o'clock in the forenoon, and four o'clock in the afternoon, from 25th *Oct.* to the 25th *March*, inclusive; and within the hours of eight in the forenoon, and six in the afternoon, from 25th *March* to 25th *October*, inclusive. 33 *Geo.* 3. c. 64. s. 1. *Disney's El. Stat.* 166.

6. Notice of an election must be given within the hours prescribed by 33 *Geo.* 3. c. 64, or it is utterly void. *Sim. Addenda*. xvii.

7. The notice should express the purpose of meeting, as well as the time and place, and must not be for a meeting *generally*. In the *Stafford* case, the writ was produced by surprise at a meeting held for other purposes, and the election proceeded to without further notice. Afterwards the house set aside the whole proceedings. *Simeon*, 153.

8. Notice is to be presumed till the contrary is shewn. *Simeon*, 153.

9. The place of election must be within the district, and ought to be in the *Guildhall*; and though there is no statute making that

*necessary*, yet if it were held in any other place, contrary to the usual course, which should occasion a prejudice to any of the candidates, it would, I presume, make the election void. *Heyw. Boroughs*, 164, *Simon*, 154.

10. In *Wales*, all the cities, *boroughs*, and towns which contribute to the wages of burgeses of shire towns, shall have notice of election in the shire towns. 35 *Hen. 8. c. 11. s. 3.* *Disney's El. Stat.* 213.

11. For other matters, see *Counties*, *Chap. I. s. ii.*

12. If the sheriff die *after the returning officer has received the precept*, he must transmit the return to the new sheriff. *Heyw. Boroughs*, 167.

13. In case returning officer should die *after notice* of the time and place of the election has been given, the manner of proceeding has not been settled by any decision. *Heyw. Boroughs*, 167.

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### Sect. iii.—Erecting Booths.

1. By the common law the returning officer was not expected to put himself to any expence, in order to accommodate the candidates or voters: it was sufficient that at

the time and place appointed, he was personally present, and ready to take and count the votes of such electors as tendered themselves. *Hycw. Boroughs*, 164.

2. The 18 *Geo. 2. c. 18.*, being made for *election of knights of the shire*, does not extend to boroughs and towns. See the title, *Disney's El. Stat.* p. 76.

3. After the election for *Westminster 1807*, the returning officer brought an action against Sir F. B. a candidate, for certain expences incurred at the election.

The first charge was, “*Cryer for proclamation, and horse-hire:*” on this Lord *Ellenborough* observed, “To proclaim the election is a duty, which the law imposes upon the high bailiff, and there is less pretence for charging the candidates with it, as they had not then been nominated.” 1 *Campbell's Rep.* 219, & 223.

4. Another charge was “for erecting hustings, and surveyor's fee for valuing same.” Lord *Ellenborough*. “The defendant's liability as to the hustings, will depend upon whether *he has in any manner undertaken to defray a part of the expence of erecting them.* In county elections the sheriff is *required* to erect hustings, to be paid for by the candidates; but this act (18 *Geo. 2. c. 18*) does not extend to cities or bo-

roughs; and the returning officer here might have taken the poll, either in the *Guild-hall, Westminster*, or in the open air." The jury were of opinion, that the defendant *had* made himself liable by sending for tickets to the hustings, and by his friends having used them. 1 *Campbell's Rep.* 219, 223-4.

5. A bond had been given to the churchwardens, to indemnify them from any harm the church might suffer, the returning officer having erected the hustings very near it: with the expences of this bond he charged the defendant. Lord *Ellenborough*, "With the bond of indemnity, I think the defendant can have nothing to do; as there was no occasion to hold the election, where there was danger to the church of *St. Paul, Covent Garden*." S. C. 1 *Campbell's Rep.* 218, 224.

6. In consequence of this decision the following act passed. Upon every election for WESTMINSTER, the bailiff or his deputy shall appoint and erect, at the expence of the candidate or candidates, a convenient booth or place for holding the election. 51 *Geo. 3. c. 128. s. 1.*

N. B. This act to be in force till 1st August, 1813 only. *Ibid. s. 9.*

## CHAPTER VIII.

*Proceeding at an Election for a Borough or Town.*

## Sect. i.—Reading the Precept and Statute.

1. ANY election or voices given before the *precept* be read and published, are void and of no force: for the same electors *after* the precept read and published, may make a new election, and alter their voices *secundum legem consuetudinem parliamenti*. 4 *Inst.* 49.

2. All officers having the execution of any *precept* shall immediately after reading it, read this act against bribery. 2 *Geo.* 2. c. 24. s. 9. *Disney's El. Stat.* 60.

3. Where the right of election is in the whole or in part in *freemen*, this act shall be read immediately after the bribery act, 3 *Geo.* 3. c. 15. s. 7. *Disney's El. Stat.* 102.

## Sect. ii.—Oaths to Returning Officer.

1. Returning officer having execution of precepts must take the same oath as sheriffs,



by 2 *Geo. 2. c. 24.*; and in this respect, all things applicable to counties are applicable to cities and towns. *Counties, Chap. II. s. ii.*

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Sect. iii.—Candidates.

1. Who is a candidate, same point as counties; see *Chap. II. s. iii.*

2. Candidate for a city, borough, or cinqueport must be seised of, or entitled to, an estate freehold or copyhold for life, or some greater estate in *England, Wales, or Berwick-upon-Tweed*, of 300*l.* per annum, above reprises. *9 Ann. c. 5. s. 7.*

3. He must take the oath, *mutatis mutandis*, prescribed by the statute; and the exception in the acts are the same as in counties. See *Chap. II. s. iii.*

4. Personal disqualifications, same as counties. See *Chap. II. s. iii.*

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Sect. iv.—Taking the Poll.

*Who is to take it.*

1. It often happens, that it is a matter of dispute in a borough, *who* is to take the poll, i. e. who is the returning officer: Mr. Ser-

jeant *Heywood* says, returning officers may be classed such as are so by common law, or by charters. *Heyw. Boroughs*, 54.

2. Lords, and even *ladies* of manors, have been permitted to make returns. *Heyw. Boroughs*, 54.

3. There are instances of this duty being performed by "bailiffs of the district in which the borough is locally situated." By "the stewards of the lords of boroughs." By "the bailiff of the lord of manor in which the borough is situated." By "the bailiff of the lord of the city or borough." By "the sub-bailiffs, where the precept is directed to the bailiffs." By "the constable," where "the borough remains in the situation of a vill at common law." By "officers called vianders." By a "portreeve." *Heyw. Boroughs*, 54-60.

4. In corporations, this depends greatly upon their charters, which sometimes have described the officers who should preside at the election of members; at others, that right has devolved on the superior corporate officer without any express appointment: in both cases, it is manifest that the charter is the foundation of their claim. *Heyw. Boroughs*, 60.

5. A general rule which holds good in most cases, is, that the *precept* will be a safe

guide to go by to discover who has a right to preside at elections. *Hoye. Boroughs, 57.*

6. If a person acts without right, he is punishable by the House of Commons. *Hoye. Boroughs, 60.*

7. The law of parliament has departed from the general law of the land; and elections made under *usurping presiding officers*, where there has been the form of an election, have been uniformly supported. *Hoye. Boroughs, 62.*

8. Whenever it is disputed, who is the legal returning officer, which often happens in cases of double returns, the decision rested formerly with the House of Commons, and now rests with the select committees, by 28 *Geo. 3. c. 52. Hoye. Boroughs, 65.*

9. No person to whom it belongs to make return of members to serve in parliament, shall be chosen into the same office, the year immediately succeeding. 9 *Anne, c. 20. s. 8. Disney's El. Stat. 231.*

#### *Taking the Poll.*

10. There is no statute requiring a written poll in boroughs, towns, or cities, nor counties; though in the statute (7 & 8 *W. 3. c. 25. s. 6.*) the returning officer, under the penalty of 500*l.* is required to give copies of the poll taken at the election. *Simon, 103.*

11. If the poll be taken in writing, then the returning officers, even in towns, must give copies as before stated. 7 & 8 *W. 3. c. 25. s. 6.* *Disney's El. Stat.* 13.

12. So also in every *city, borough, or other place* every person retained as poll-clerk shall be sworn. (See *Form of the Oath, ante Chap. II. s. iv.*) before the poll begins. 25 *Geo. 3. c. 84. s. 7.* *Disney's El. Stat.* 154.

13. The high bailiff of *Westminster*, in an action, charged the candidate, for “twenty-four poll-clerks, at 21s. and 5s. each;” on this item Lord *Ellenborough* said, “So the law requires him (the plaintiff) to do whatever is necessary to making the returns, and if the election cannot take place without the attendance of so many staff-men and *poll-clerks*, he alone must retain and pay them.” 1 *Campbell's Rep.* 213-223.

14. All regulations as to commissioners for administering oaths by 34 *Geo. 3. c. 73.*, and 42 *Geo. 3. c. 62.* affect boroughs as well as counties. See *Chap. II. s. iv.*

15. The bribery oath is to be administered before polling, as directed by 2 *Geo. 2. c. 24.* 45 *Geo. 3. c. 74. s. 1.* *Disney's El. Stat.* 192.

16. In *Morris v. Burdett*, the returning officer in his action, charged the defendant, a candidate, “two commissioners for administering the oaths of allegiance,” at 21s. and

55. Lord *Ellenborough* said, “ for a share of the expence incurred in administering the oaths to the Roman Catholic electors, the defendant appears to be liable if he shall be considered to have acceded to the character of a candidate. But the statute, while it casts this burthen upon the candidates, regulates the amount of compensation to be given to the commissioners ; and enacts, that the returning officer shall provide commissioners at *a sum not exceeding one guinea per day*, for administering such oaths. This item, therefore, must be reduced to that amount. 1 *Campbell's Rep.* 218-223.

17. As to closing the poll, alterations in the poll-books, see *Counties*. Chap. II. s. iv. The 25 *Geo. 3. c. 84.*, affects boroughs and towns. (See *Heyc. Counties*, 389-390.) *Counties*, Chap. II. s. iv.

18. At elections for *Westminster*, the bailiff or his deputy, in case of a poll being demanded by any of the candidates, or two or more electors, shall appoint poll clerks not exceeding twenty-six in number, at the expence of the candidates. 51 *Geo. 3. c. 126. s. 1.*

19. The bailiff shall also make out a list of the several parishes, &c. not exceeding eleven in number, into which the booth shall be apportioned ; and deliver copies to candidates or agents desiring the same, at two shillings each. 51 *Geo. 3. c. 126. s. 1.*

*Scrutiny.*

20. With respect to scrutines, it has been already said, that the act of 25 *Geo. 3. c. 84.*, “to limit the duration of polls and scrutines,” for “places within *England* and *Wales*,” affects boroughs. (See the title and preamble. *Disney’s El. Stat.* 149.) See therefore, *Chap. II. s. iv. pl. 51.*

21. The scrutiny on a general election, must close, so that officers acting under precepts, shall make their returns, at least *six* days before the return of the writ. 25 *Geo. 3. c. 84. s. 1.* *Disney’s El. Stat.* 150.

22. In case of an election during a session or prorogation, and a scrutiny granted, it must be finished, so that the return may be made within thirty days after the close of the poll, or sooner if convenient. 25 *Geo. 3. c. 84. s. 151.*

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 Sect. v.—Voters.
*Last Determination.*

1. THE returning officer, if he makes a return contrary to the last determination of the House of Commons, makes a “false return.” 7 & 8 *W. 3. c. 7. s. 1.* *Disney’s El. Stat.* 7.

2. A very short time after this act (7 & 8 *W. 3. c. 7.*) passed, the House of Commons

decided, that it did not bind them, and regulate their decisions, but only gave a rule for the officer in making his return. *Hayw. Boroughs*, 189.

3. Such votes shall be deemed legal, as have been so declared in the last determination of the House of Commons, which determination is made final to all intents and purposes. This act passed, 1799. 2 *Geo.* 2. c. 24. s. 4. *Disney's El. Stat.* 58.

4. So much of the 2 *Geo.* 2. c. 24. as relates to any determination to be made in the House of Commons, subsequent to the passing of this act (i. e. 1788.) is repealed. 28 *Geo.* 3. c. 52. s. 31. *Disney's El. Stat.* 290.

5. Since the passing of both these acts, (i. e. 1775.) the committees would not hear evidence to *contradict* a determination on the right of voting. 3 *Doug.* 36.

6. But it seems that the last determinations have been *explained* and *extended*, frequently. 3 *Doug.* 56. n. (C.) *Hayw. Boroughs*, 222-256.

7. To have been a last determination (before the 28 *Geo.* 3. c. 52.) it must have been an *express* resolution of the house itself, or expressly adopted from the committee. *Simon.* 157.

8. Now the resolution of a select committee, under certain regulations, is, by act of

parliament (28 *Geo.* 3. *c.* 52. *s.* 27., &c.) made conclusive. *Simeon*, 137.

9. A last determination should be so clearly and accurately laid down, that no reasonable doubt can arise upon the construction of it. If there be any ambiguity upon the face of it which will admit of two meanings, the true construction must be found out before the rule can be ascertained. *Simeon*, 137.

10. It is a principle of construction to extend rather than to narrow the right of voting, in favour of the franchise. *Simeon*, 139.

#### *Voters, Freeholders, Value.*

11. It has been observed, that no agreements of the candidates or other persons can alter the right of election.

12. Before the statute of 8 *Hen.* 6th, *c.* 7. was passed, there was no limitation in the annual value of the freeholds which were to entitle their owners to vote: That statute respects counties only. 13 *Geo.* 2. *c.* 20. respects towns being counties; and the 10 *Ann.* *c.* 23. and the 12 *Ann.* *c.* 5. are confined to counties: so that the freeholds in boroughs and town, as to value, are left as at common law. *Heyw, Bor.* 390, 392.



*Possession.*

13. With respect to freeholders entitled to vote at elections in cities and boroughs *not being counties* there is no limitation imposed; but they may vote in right of freeholds *conveyed to them at any time*, however short, before the election, provided their conveyances are made *bona fide*, and not fraudulently, on purpose to qualify them to vote. *Heyw. Bor.* 406.

*Assessment.*

14. The 18 *Geo. 2. c. 18.*, extends only to “election of knights of the shire,” and 20 *Geo. 3. c. 7.*, to “county elections.” Both regulating assessments. See *Disney’s El. Stat.* 76, 117.

15. Mr. *Serjeant Heywood* has noticed these acts, as they affect cities being counties, but not boroughs merely. *Heyw. Boroughs*, 408.

*Splitting Votes.*

16. The provisions made against fraudulent and occasional votes for counties, apply in general to votes for boroughs also. *Heyw. Boroughs*, 398. See *Counties, Chap. II. s. v. pt. 117.*

*Annuities.*

17. It is to be observed that the 3 *Geo.* 3. c. 24.; which regulates votes in right of annuities, is an act to prevent fraudulent votes in “elections of *knights of the shire*, and of “members for cities and towns which are “*counties themselves*.” And the enacting part includes voters “for electing members “for *such* cities or town.” *Disney's El. Stat.* 103, 104.

18. For matters which may affect the freehold generally, see *Counties, Chap. II.* s. v. *pl.* 1. §c.

*Burgage-holders.*

19. I come now to the first class of the rights of election, by burgage tenure, which is considered as a real right annexed to the soil, and cannot be lost though the tenements are destroyed, so long as the evidence of the right remain. *Simcon*, 110.

20. In the second *Downton* case, a burgage was defined to be, “an entire indivisible “tenement, holden of a superior lord of a “borough, by an immemorial certain rent “distinctly reserved, to which the right of “voting is incident.” *Simcon*, 111.

21. A burgage may be *held* of manor, of which it is not parcel: but it does not give a vote. *Hopk. Boroughs*, 287.

22. Thus in *Downton*, there are burgages called half burgages, and quarter burgages; but where these are not created within the time of memory, but have been immemorially entire, they give a right of voting, and are, in truth, taken to be entire burgages; but no division, made within time of memory, can give a right which belongs to the entire burgage only; and on that reasoning probably the first *Downton* case was determined. *Simon*, 112. 2 *Fraser*.

23. If the parcels in the conveyance to the voter, or to those under whom he claims, can be construed with propriety as including the whole burgage, it shall, though some parts be dropped in the enumeration. *Simon*, 113.

24. So where a rent in 1611, had been since clearly subdivided and multiplied, and was payable in distinct portions: for they must be considered as distinct reservations upon the broken parts of the burgage. *Simon*, 113.

25. A variance in the rent will not prejudice, if the entirety of the burgage be proved by boundary. *Simon*, 111.

26. These burgages being excepted expressly out of the *Durham* act, may be conveyed at any time before the election: but the conveyances and titles must be as strictly

made and proved, as if it was a real sale for a valuable consideration, and the question of title was in issue, in ejectment. *Simeon*, 114.  
2 *Fraser*.

27. In most if not in every one of the burgage tenure boroughs, there will be found traces of a court of some description, through which the lord, in feudal times, administered justice to his vassals, and at which all his burgage tenants were bound originally to attend as suitors. *Heyw. Bor.* 259.

28. The nature of this *tenure* will be illustrated by a reference to the proceedings respecting some of the boroughs, where the right of voting is confined to it; and from them we may gather, that the paying a certain rent, reliefs, and fines on alienation, and doing fealty and suit at the lord's courts, were its usual incidents. *Heyw. Bor.* 260.

29. But the payment of rent, or the performance of any particular duty or service, was not anciently a necessary incident to, or a distinguishing characteristic of burgage tenure. *Heyw.* 263.

30. In the *Horsham* case 1792, the irregularity of the rent was received as one circumstance, to disprove the identity of the tenement, for which the vote was claimed; but in the case of *Wm. Harges*, where *the rent had varied*, but the identity of the premises was

satisfactorily proved by the boundaries, the vote was held good. *Heyw. Bor.* 264.

31. So that the tenure of burgage is from the antiquity, and their tenure in socage is the reason of their estate: and the right of election is annexed to their estate, so that it is part of the constitution of *England*, that these boroughs shall elect members to serve in parliament, whether they be boroughs corporate or not corporate; and in that case the right of election is a privilege annexed to the burgage lands, and is as I may probably call it a real privilege. *Heyw. Bor.* 265.

32. But there are many towns, sending no representatives to parliament, in which burgages have existed from time immemorial; and boroughs represented in parliament in which are burgage tenements, whose owners or occupiers have not, as such, the privilege of voting. *Heyw. Bor.* 267.

33. It is hardly necessary to observe, that the right of voting is not confined to burgage houses; but that the tenements which give the privilege frequently consist wholly or in part of lands. *Heyw. Bor.* 269.

### *Splitting Burgages.*

34. The 7 and 8 *W. 3. c. 25. s. 7.* commonly called the splitting act, has, in several

cases, been held to be applicable to burgages (see 1 *Peckw.* 321.); but there has been much doubt upon this point: and many cases in which it was held, that burgages are *not* within the splitting act, are collected by Mr. Serjeant *Heywood*, in his volume on Boroughs. *Ed.*

35. These half and quarter burgages, (see *ante*, pl. 22.) are not so denominated, because they contain such proportions of entire burgages; but because they pay such proportions of their ancient annual rents. *Heyw. Bor.* 276.

36. When these divisions of burgages were made, cannot now be traced; but according to the modern decisions, it is necessary, in order to account for some of them, as well as entire burgages carrying votes, to suppose that they were so granted out originally by their lords. *Heyw. Bor.* 278.

37. The word indivisible, (see pl. 23.) must be understood with some restriction: for it has never been contended, that a burgage tenement may not be divided, and the portions conveyed to separate purchasers. The beneficial law passed in the eighteenth year of *Edward* the first, known by the name of the statute of *quia emptoris*, which expressly provides *quod de cetero licet unicuique libero homini terram suam seu tene-*

*mentum seu partem, inde pro voluntate sua venderi*: and that the feoffee shall hold immediately of the lord of the fee, by the same services as the feoffor formerly held, is understood to extend to this tenure; so that the tenement is divisible, exactly as if it had been a common freehold; but according to the decisions in the *Downton* and other cases, after such division, the right of voting before annexed, to the soil of the whole, does not follow each of the separate parts. *Heyw. Bor.* 278.

38. In the common law, no prohibition to exercising this privilege is found; but by the law of parliament it has been supposed, that portions of a burgage tenement entitled to vote if split within time of memory, do not transmit that right to their holders. *Heyw. Bor.* 279.

39. The committee. (*Horsham*, 1792. 2 *Fraser*, 40.) uniformly decided against all the votes which had been tendered or received at the election, by tenants of parts of burgages, split since the time of memory. *Heyw. Bor.* 281.

40. Of late, however, (and the case of *Horsham*, 1792, may be referred to as the most recent instance;) it has been admitted, that whenever an ancient burgage, giving the right of voting, is split, that right is, though

not wholly lost, yet suspended, and in abeyance, and cannot be exercised by any of the tenants of its divisions ; and indeed, where there is no custom to regulate, it seems very difficult to determine to whom the preference shall be given. *Heyw. Bor.* 290.

#### *Value.*

41. The annual value of a burgage tenement, as has been already observed, can never come in question before an election tribunal, except collaterally, for its present value is immaterial ; but whether it pays that annual rent which is now considered as incident to the tenure, and evidence of the entirety of the tenement, is always material to be enquired into. *Heyw. Bor.* 291.

#### *Interest.*

42. The tenure in burgage seems to be very various : thus “ inhabitants possessing houses “ within the borough, who are freeholders, “ copyholders, or leaseholders for any term ;” have voted ; or again, “ tenants of burgage “ houses by lease for years absolute, had a “ right to vote ;” or, “ every tenant of any “ burgage tenement *in fee* for life, or ninety- “ nine years determinable on lives, or *by* “ copy of court-roll paying a burgage rent.” *Heyw. Boroughs,* 251, 286.



43. It appears that persons having equitable titles in burgage, as trustees, &c. may vote; and see the arguments *pro* and *con*. *Heyw. Boroughs*, 308, 314.

44. But in general, it is extended to those who have a freehold interest, who are seised in fee for term of life. *Heyw. Bor.* 292.

#### *Producing Title Deeds.*

45. And it has not been uncommon for returning officers to insist, at the poll, upon the production of their title deeds, before they were allowed to vote: many instances occur, in which this has been done, as at *Downton*, &c. *Heyw. Bor.* 301.

46. The tenement must not only be formally conveyed to its present owner or possessor, but in case his vote is contested, he must be prepared to deduce his title with as much regularity and nicety as upon the trial of an ejectment. (*Ante*, pl. 25.) *Heyw. Bor.* 305.

47. The grantee must be in possession of the burgage tenement, so far at least, as is necessary to give him a complete title before he can be entitled to vote. This possession is usually given by the means of the lease for a year which precedes the deed of release; and it seldom happens, that voters are in the actual possession of the tenements either by

occupying them themselves, or receiving the rents and profits from those who do occupy them. *Heyw. Bor.* 306.

### *Identity.*

48. As to the *identity* of the burgage, five points are generally made the subject of enquiry.

I. The name of the burgage, which, if found in all the deeds to be the same, would afford a presumption in favour of the identity of the burgage.

II. The contents, which are extremely necessary to be considered in this tenure; because, if any part of an aggregate specification were afterwards omitted, that omission, if no satisfactory account were given of it, would undoubtedly destroy the vote.

III. The boundaries; which, if all along described in the same manner, will create a strong presumption in favor of the contents.

IV. The rent; for though rents may be released or abandoned by the lord: where that is not the case, if the rent is lessened, and the contents are not proved to be the same, the presumption is, that the burgage is not entire.

V. The situation of the streets. 2 *Fraser*, 56.

49. In the *Horsham* case, the following five propositions, as descriptive of a burgage vote were referred to from 3 *Luders*, 210.

I. In a proper burgage tenure borough, the right to vote is incident to the freehold interest of every burgage.

II. Such right may be suspended, but cannot be extinguished.

III. Every ancient tenement situate within such borough, and held by soccage tenure, is a burgage.

IV. The characteristics of a burgage are, that the tenant is liable to pay to the lord of the borough, a rent certain, a relief upon descent, and a fine upon alienation.

V. The question, whether a tenement is or is not a burgage being a question of prescription, the affirmative may be established by any of the modes of proof by which other prescriptions or customs are proved. 2 *Frascr*, 57.

#### *Copyholders.*

50. The only borough in which common copyholders present themselves as enjoying the elective franchise, is *Cricklade*. *Heyw.* 413.

#### *Leascholders.*

51. At *Corff Castle* tenants for years, determinable on any life or lives; at *Cricklade*, leascholders for any term not less than three years, or for any such term, or greater term determinable on life or lives; at *Lugershall*, such persons as have any estate of leaschold

determinable upon life or lives, within the borough, have a right to vote. *Heyw.* 411.

*Corporators and Freeman.*

52. The corporate right of election is prescribed by charters which are mostly existing. This right of election is modern in comparison with others. *Simcon*, 115.

53. By the common law, all elections of corporate officers, depend upon the legality of the election of the presiding officer: he must be not only in possession of the office *de facto*, but he must be entitled to hold it *de jure*. *Heyw. Bor.* 61.

54. It was said that *P. Deane* was disqualified by the *Durham* act, not having been in possession of his franchise for a year before the election; but it was answered that the *Durham* act only applies to those voters who claim in right of their freedom, whereas it is not the being a freeman, but the being a capital burgess which gave a right to vote at *Harwich*. The vote of *P. Deane* was determined to be good. 1 *Peckw.* 400.

55. No freeman to vote at election of members, unless they have been admitted to their freedom twelve calendar months before the first day of such election. 3 *Geo.* 3. c. 15 s. 1. *Diency's El. Stat.* 100.

56. This act does not extend to any person entitled to his freedom by birth, servitude, or marriage. 3 Geo. 3. c. 15. s. 2. *Disney's El. Stat.* 101.

57. Penalty on antedating admissions of freemen. 3 Geo. 3. c. 15. s. 3. *Disney's El. Stat.* 101.

58. The books and papers of admission of freemen to be open to inspection, upon demand by any candidate, his agent, or two freemen; and copies and minutes of admission to be given upon reasonable payment. And the books, &c. to be produced, if demanded, at every election. 3 Geo. 3. c. 15. s. 4. *Disney's El. Stat.* 101.

59. Penalties how recovered, and limitation of prosecution. 3 Geo. 3. c. 15. s. 5, 6. *Disney's El. Stat.* 102.

60. In the case of *Guilford*, 3d of February, 1710, it was admitted before the committee of elections, "that one who has served a seven years apprenticeship in the town to a freeman is, *ipso facto*, a freeman." 1 *Doug.* 271.

61. In the case of *Sudbury*, (2 *Doug.* 135,) 19th Jan. 1700, "that persons having certain inheritance rights to freedoms described in the resolution, have a right to vote without any admission." 1 *Doug.* 272.

62. And where the election was upon

*Monday*, and the application to be admitted was made on the *Sunday* preceding, it was held as sufficient. *Oakhampton's case*, 1791, since the 3d of *Geo.* 3. *Simcon*, 118. 1 *Fra.* 166.

63. So where a court was held on the *Saturday* before the same *Monday*, at which the voter might have applied, and did not, but applied to the mayor to hold a court on the *Monday* morning, who refused, the vote was held good. In these cases the antecedent title was admitted to be clear. *Simcon*, 118.

64. In all cases where the corporator has been in undisturbed possession of his franchise for such a period as to be good against a *quo warranto*, the committees will not enter into any objection to the title of the voter; that period, by analogy to the statute of limitations, was formerly settled at twenty years. *Simcon*, 119.

65. Since this, however, the judges of B. R. have concurred in favour of corporate rights, to fix it at six years. 1791. *Simcon*, 120.

66. The mode of election may be regulated by a bye-law of the corporation, fairly and properly made, so it be consistent with the charter, or the law of the land: and long usage is evidence of such bye-law. *Simcon*, 120.

67. By the constitution of some bo-

roughs, honorary freemen or burgesses have voices in elections for members of parliament. *Durham, Bedford*, and a variety of other places exhibit instances of this species of right. As such persons must be regularly admitted according to the rules and customs of the corporation, such admissions must be strictly proved. *Simcon*, 121.

68. If any question is made upon the identity of the person polled, with the person of the same description entered in the corporation book, the *onus probandi* shall be on the party objecting. *Simcon*, 123.

69. It is not necessary that a corporation should remain complete and entire in all its parts to exercise the right of voting. *Simcon*, 124.

70. That persons whose admissions were stamped after their votes were given, were not to be allowed as legal voters at the last election. *3 Doug.* 215.

71. That it is not necessary, by the stat. *3 Geo.* 3. for freemen, whose right in every other respect is complete a year before an election, to have their admissions entered on stamps twelve calendar months before, in order to qualify them to vote at such election. *3 Doug.* 220. \*

72. Resolved that the voters whose admissions were stamped during the poll, prior

to their voting are to be admitted as legal voters at this election. 3 *Doug.* 207.

*Scot and lot.*

73. "To pay scot," is to pay parochial taxes, and "to bear lot" to perform parochial duties, and discharge parochial offices. 3 *Doug.* 75.

74. Whatever was formerly understood by the payment of scot and lot, the term, at present, when used to define the right of election, means no more than the being rated to the poor. *Arguendo.* 1 *Packe.* 103.

75. The same meaning is given to the term. 1 *Doug.* 140.

76. Resolved, *Milborne Port* case. "that persons *rateable* and *having paid* to the rate, though that rate be made by officers illegal or doubtful, have a right to vote as inhabitants paying scot and lot." 1 *Doug.* 129.

77. The committee, *Bridgwater* case, determined, "that persons rated and not having paid the rates before the day of election, the rates having been legally demanded, and no fraud appearing on the part of the overseers, are disqualified from voting." 1 *Packe.* 108.

78. 11th *Jan.* 1699-1700. Resolved, "that the mayor, aldermen, and all the inhabitants within the borough of Newark-upon-



“Trent, in the county of Nottingham, who  
 “pay, or *ought to pay*, scot and lot, within  
 “the said borough, have a right to vote at the  
 “election of members to serve in parliament  
 “for the said borough.” 3 *Doug.* 191.

79. A person who has been rated and ex-  
 cused paying the rates upon his own appli-  
 cation, is not disqualified from voting for a  
 member of parliament for the borough of  
*Cochester.* 1 *Peckw.* 507.

80. If no rate is made for a considerable  
 period, and a new occupier wants to have a  
 vote, he shall not have it unless he obtain a  
 rate to be made by mandamus, if the over-  
 seer refuse. But perhaps such a measure as  
 this would hardly be exacted by a committee,  
 if there was satisfactory proof that the making  
 the rate was *fraudulently* deferred. *Simon,*  
 119.

81. Voter rated by a wrong christian name  
 rejected as a bad vote. 2 *Peckw.* 335.

82. It seems unsettled whether an overseer  
 can be compelled to produce the rate at the  
 election; but the weight of reasoning and au-  
 thority are in favour of the opinion that he is  
 compellible. 2 *Peckw.* 165, and n. (B). *Ibid.*  
 171.

83. In the case of *Seaford* 1736, 3 *Enders,*  
 96, it was required to be shown, that the  
 voters, whose ratability was insisted on,

had done all in their power to have their names actually inserted in the rate. 1 *Peck*. 482.

84. The voter having stood on the rate for five years, and no appeal having been made, the committee would not receive evidence to shew that he had no rateable occupation, unless criminal partiality could be proved against the overseers. 1 *Peck*. 484.

85. The committee, *Lcominster*, 1796, where a voter had voted, would not hear evidence to shew that he had not any rateable property. 2 *Peckw*. 394.

86. No person shall vote, (*inter alia*), “as an inhabitant paying scot and lot,” unless he shall have been actually and *bona fide* an inhabitant paying scot and lot, six calendar months previous to the day of the election at which he shall tender his vote. 26 *Geo.* 3. c. 100. s. 1. *Disney’s El. Stat.* 161.

87. The statute not to extend to persons acquiring possession by descent, devise, marriage, marriage settlement, or promotion to an office or benefit. 26 *Geo.* 3. c. 100. s. 1. *Disney’s El. Stat.* 161.

88. The act 26 *Geo.* 3. c. 100. has been held, after much argument, to extend to “inhabitant *housekeepers* paying scot and lot,” though *housekeeper* seems to be a super-added qualification, against sect. 3. of the act. *Simcon*, 128. (*v*).

*Potwallers.*

89. It was agreed that a *potwaller* is a person who furnishes his own diet, whether he be a house-holder, or only a lodger. 1 *Doug.* 371.

90. It has been said that the journals of the House have recognized that *apprentices* cannot be potwallers qualified to vote. 1 *Doug.* 371.

*Householders and Inmates.*

91. Resolved, in *Cirencester* case, 1792, that no person can be deemed a *householder* who does not possess an exclusive right to the use of the outward door of the building, although by taking *inmates* he may have relinquished for a time *the exercise* of that exclusive right; neither can a person whose habitation is composed of more apartments than one be deemed a householder, unless he also possesses an exclusive right to the use of the stair-case, door-way, or other passage that forms the means of communication between his several apartments, although by taking inmates he may have likewise relinquished for a time the exercise of that right.

The exclusive right is the criterion between householder and inmate.

The *outward door to the building* does not

include within its meaning the gates or outward door of a court or passage open to the sky. A house may contain but a single apartment, yet it does not follow as a necessary conclusion that a single apartment, though furnished with a separate outward door will constitute a house; for a shop or stall, unless it be used as a dwelling, is certainly *not* a house.

“ That it is the opinion of this committee  
 “ that the legal meaning of the terms *house-*  
 “ *holders and inmates* must be determined on  
 “ the general principles of the law of the land,  
 “ not on any ideas suggested by local usage.

“ That it is the opinion of this committee,  
 “ that if a passage is considered as a street  
 “ passage (though covered), all the houses  
 “ that have separate outward doors opening  
 “ into that passage, are good votes.”  
 2 *Fraser*, 449, 451.

### *Populacy.*

92. In the case of *Hendon*, 1749, the word *populacy* is used both by the parties and the committee as different from “ *inhabitants, householders paying scot and lot,*” and synonymous to “ *potwallers.*” 3 *Doug.* 56. n. (B).

93. Resolved, “ that in the last determination of this house, &c. the word *populacy*

“ therein mentioned, extended only to the  
 “ inhabitants, housekeepers of the said town  
 “ and port paying scot and lot.” 3 *Luders*,  
 38, 9.

94. Populacy, in the case of *Seaford*, was  
 explained by the house to mean, “ *inhabi-*  
 “ *tants housekeepers paying scot and lot.*”  
*Orme*, 251.

### *Commonalty.*

95. The house determined, 2d *March*,  
 1762, “ that, in the last determination for  
 “ *Bridport*, the words ‘ *commonalty in gene-*  
 “ *ra*’ extends only to inhabitants householders  
 “ paying scot and lot.” *Journ. vol. xxix.*  
*p. 205. col. 2. p. 205. col. 1. 2 Doug.* 293.

96. In *Poole* the word commonalty means  
 the inhabitants who are incorporated by the  
 charter. 2 *Doug.* 256.

### *Inhabitants.*

97. In common language when we talk of  
 the *inhabitants* of a parish, who are meant  
 but those who are permanent householders  
 there :

Thus Lord *Coke*, in his commentary on  
 the statute of 22 *Hen. 8. c. 5.*, 2 *Inst.* 703.,  
 concerning the reparation of bridges in high-  
 ways, expounds inhabitants (no qualifying

epithet being super-added) to mean, “such  
“ as be householders.” 3 *Doug.* 81.

98. Resolved, “that where no custom nor  
“ charter for election; there the inhabitants  
“ householders ought to make the election.”  
2 *Doug.* 233.

99. *March* 17th. “*J. W. Vaughan*; resi-  
“ dence, *Princes Street*; it appeared that he  
“ carried on his business in *Princes Street*,  
“ but that he slept in *Orange Court*, where  
“ his freehold was, and where another  
“ person lived as a lodger.” The committee  
decided the vote to be bad. 2 *Peckw.* 56.

100. Lord *Coke*, more fully speaking in the  
same place, says: “if a man dwelleth in a  
“ foreign shire, riding, or city, or town cor-  
“ porate, and keepeth a horse, a house, and  
“ servants in another shire, riding, city, or  
“ town corporate, he is an inhabitant in each  
“ shire, riding, city, or town corporate. &c.  
“ *Ex vi termini*. Every person that dwelleth  
“ in any shire, riding, city, or town corporate,  
“ though he hath but a personal residence,  
“ yet is he said in law to be an inhabitant or a  
“ dweller there, as servant, &c.” But this  
statute extendeth not to them, but to such  
as be householders. 2 *Inst.* 703.

101. A person having prior connections  
with a borough, took a house at first for *four*  
*years*, but afterwards at his landlord's request

for *one* : he slept there one night previous to the election (of himself as bailiff), did not return again for nearly a month after, when he staid two days, but retained possession of his house during the whole time under his lease. The court of K.B. thinking it a *bona fide* taking, held this a good residence. 5 *T.R.* 466.

*Residence necessary.*

102. The statute of 26 *Geo.* 3. enumerates the following sorts of voters :

Inhabitants paying scot and lot ;

Inhabitants householder, housekeeper, and potwaller, legally settled ;

Inhabitants householder, housekeeper, and potwaller ;

Inhabitants householder resiant ;

Inhabitants of such, &c.

And enacts, that they shall not vote unless they have been “*actually and bona fide*” such, six calendar months previous to the day of the election at which they shall tender their votes. 26 *Geo.* 3. *c.* 100. *s.* 1. *Disney’s El. Stat.* 161.

103. Not to extend to persons acquiring possession by descent, marriage or promotion. 26 *Geo.* 3. *c.* 100. *s.* 1. *Disney’s El. Stat.* 161.

104. Not to extend to any inhabitants with super-added qualifications. 26 *Geo.* 3. *c.* 100. *s.* 2. *Disney’s El. Stat.* 161.

105. But it has been extended to “*inhu-*

“*bitants housekeepers paying scot and lot.*”  
*Simeon*, 128.

106. Every person claiming to vote at any city, borough, or other place where there is no other oath or affirmation of qualification, other than the oaths, &c. against bribery, of allegiance, supremacy, and abjuration, shall, if required by any candidate or voter, take the following oath.

“I do swear, (or *affirm*) that my name is  
 “A. B. and that I am (*specifying addition,*  
 “*profession, or trade*); and that my place of  
 “abode is at                    in the county of  
 “[and if it is a town of more streets than one,  
 “*specify the street*]; and that I have not be-  
 “fore polled at this election; and that I verily  
 “believe myself to be of the full age of twenty-  
 “one years.” 25 *Geo. 3. c. 84. s. 5. Disney’s El. Stat.* 152.

107. A voter wished to insert two places of abode in the oath, the returning officer refused his vote at the election, but a committee admitted it. 1 *Peckw.* 390, 2.

108. Personal disqualifications are the same as in counties. See *Counties. Chap. II. s. v.*



## CHAPTER IX.

*Proceedings after an Election for a Borough or Town.*

## Sect. i — Making the Return.

1. The return should be made by him to whom the precept is directed. *Heyw. Bor.* 57.

2. As the stat. 10 and 11 *W.* 3. c. 7. extends to *all* returning officers, see *ante*, *Counties*, Chap. III. s. 1.

3. Though there be no dispute as to the returning officer, double returns often take place where the right of election is uncertain, and the returning officer will not take upon him to decide it; or where an objection is against a class of voters who stand in particular circumstances. It is frequently made also where there is an apparent equality of voices. 1 *Puck.* 17.

4. In other respects see *Scrutiny*, Chap. VIII. s. iv.

5. Must be sealed and indented. See Chap. III. s. 1.

6. The 10 *Ann. c. 23.* being made for elections “of knights of shires” does not extend to boroughs or towns. So that (section 5) that act requiring poll-books to be delivered to the clerk of peace does not affect them. See *Disney’s El. Stat.* 36, &c.

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